# The Funding of Living Trusts

Carla Neeley Freitag

Section of Real Property, Probate and Trust Law

Defending Liberty
Pursuing Justice

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# About the Author

Carla Neeley Freitag is a tax consultant and author of legal materials with offices in Cape Canaveral, Florida. She specializes in federal taxation, estate planning, and exempt organizations. Freitag is admitted to practice in Florida, Texas, and Georgia.

Freitag is a native Floridian who grew up in Delray Beach, Florida. She received her B.A. degree from Duke University and has a J.D. degree from the University of Florida and an LL.M. degree in Taxation from the University of Miami. While in law school, Freitag served as Executive Editor of the University of Florida Law Review. Freitag began her legal career with the firm of King & Spalding LLP in Atlanta, practicing corporate, tax, and estate planning law. She subsequently taught in the J.D. and LL.M. programs at Southern Methodist University School of Law. Upon returning to Florida, Freitag joined the firm of Amari & Theriac, PA, in Cocoa, Florida, where she represented tax and estate planning clients. She subsequently closed her law practice in order to devote more time to writing. Freitag is a member of the American Bar Association and the Brevard County Estate Planning Council.

Freitag is the author of several Bureau of National Affairs, Inc. publications, including Tax Management Portfolio 874, *Unrelated Business Income Tax*, Tax Management Portfolio 875, *Debt-Financed Income (Section 514)*, Tax Management Portfolio 539, *Net Operating Losses: Concepts and Computations*, Tax Management Portfolio 607, *Farm and Ranch Expenses and Credits*, Tax Management Portfolios 281 and 521, *Charitable Contributions: Income Tax Aspects* (coauthor), and Tax Management Portfolio 517, *Scholarships and Educational Expenses* (coauthor). She has also written extensively for Tax Management's Tax Practice Series, including the section *Exempt Organizations & Private Foundations,* and chapters *Charitable Contributions*, *Cooperative Organizations*, *Net Operating Losses*, and *Farming Expenses*. She has published articles in various legal and other publications, including TEXAS JURISPRUDENCE 3D, TAXES, IN BRIEF, BREVARD REVIEW, SPACE COAST PRESS, and MISSILEER. Freitag was named a Tax Management Distinguished Author in 1996.

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# Preface

Living trusts were used sparingly in the typical estate planning practice as recently as three decades ago. Inter vivos trusts were recommended primarily to achieve estate tax savings and for elderly clients with existing or foreseeable incapacities. During the intervening period, the estate planning landscape has changed dramatically. Living trusts continue to facilitate estate tax savings, but they are also commonly used to avoid probate and to provide for potential incapacity. As living trusts proliferate, it is essential that attorneys fully understand all facets of trusts, including the drafting, funding, and administration of trusts. The focus of this book is on trust funding, which entails the transfer of title to property from the settlor of a trust to the trustee.

Unfortunately, most existing living trusts are totally or partially unfunded. This state of affairs is due to a multiplicity of factors, including lack of awareness, time, and economic incentive on the part of attorneys who draft living trusts. In addition, clients who are instructed to transfer all their property to their living trusts rarely do so, either because it is too much trouble, because they do not know how, or because they just do not get around to it. Moreover, funding an asset into a trust can be a frustrating experience, involving contact with representatives of third parties, such as banks, brokerage firms, transfer agents, insurance companies, and various state and federal agencies, whose representatives may not fully understand the concept of trustee ownership. If trusts are not properly funded, however, the purposes for which they are created will not be accomplished.

The purpose of this book is three-fold. First, the book emphasizes the importance of trust funding in a client's estate plan and suggests the proper roles for the attorney and client in accomplishing this critical function. Second, the book provides a practical look at the funding process in general and the funding of specific assets. Finally, because more trust funding litigation will likely result as increasing numbers of trusts are administered upon the deaths of the settlors, the book collects and analyzes the existing case law, statutes, and treatises on the necessity of trust funding as well as on specific funding issues. Hopefully, these authorities will be instructive on avoiding funding errors and will also provide guidance for representing successor trustees, beneficiaries, or heirs at law after a settlor has died leaving an unfunded or improperly funded trust.

The book is written for attorneys and their staff members to serve as a broad overview of trust funding as well as a reference book to consult as particular funding

issues arise. The use of the book will depend on the experience of the attorney or staff member. A new attorney, a staff member who is new to trust funding, or a generalist who does not specialize in estate planning will find all the basics of trust funding, including step-by-step instructions for funding many types of assets, practical considerations that may save valuable time and minimize errors, and samples of numerous funding documents. Staff members who are charged with the responsibility of funding trusts but are not given adequate guidance or supervision will find the book a valuable resource. An experienced estate planner may find alternative ways to fund specific assets or may look up information about funding an asset not typically encountered. For example, for my only trust client who owned an airplane, my assistant and I researched, talked with FAA personnel, requested the required forms, and reviewed the applicable regulations in order to ascertain whether and how to transfer the airplane to the trust. A reader in a similar situation may save time and effort by consulting the applicable discussion in the book.

Funding techniques and strategies lack uniformity as a consequence of varying state laws and attorney practices. Thus while my goal is to provide a comprehensive treatment of the subject of trust funding, inevitably there are funding procedures or specific assets that are not addressed in the book. If a reader uses a funding procedure or has experience funding an asset that is not covered, or spots an error or omission, I would like to hear about them.

Carla Neeley Freitag

CHAPTER 1

# Introduction

In modern estate planning, the use of living trusts has become the routine rather than the exception. Although numerous types of living trusts are designed to accomplish a variety of purposes, every living trust directs that actions be taken with respect to the trust property before and after the death of the settlor of the trust. If a trust does not own the property with respect to which the actions are to be taken, the purposes of the trust are totally or partially frustrated. Given the common employment of living trusts, and the valuable purposes they accomplish for estate planning clients and their beneficiaries, it is essential that these trusts contain the assets they are designed to hold. Funding is the process of transferring ownership of assets from a settlor to a trust.

Consider the following questions and answers from a nationally syndicated real estate column:[1]

> **Q:** My mother died last December. As her only child, several times I asked if she had a living trust. She said she did, even giving me the name of her lawyer. It's true that she had a living trust. But I discovered last month that she never transferred title to her home, a small rental property, her bank accounts and common stocks into her living trust.
>
> When I contacted the lawyer who charged her $1,000 to create the living trust, he claimed it wasn't part of his job to make sure she "funded" her living trust by changing titles. As a result, I will have to incur unnecessary attorney and probate fees to transfer all these assets into my name as my mother's sole heir.
>
> I hope you will warn your readers that not only should they have a living trust to save their heirs time and money, but they must transfer their assets into the living trust if it is to accomplish its purpose.
>
> **A:** Thank you for sharing that difficult situation so we can learn from it. You are absolutely correct that a living trust can only serve its purpose of avoiding probate costs and delays if the trustor's major assets have been transferred into the living trust. . . .

Frankly, the attorney who charged your mother $1,000 to prepare her living trust should have at least included the transfers of her real estate into the living trust. Paying a modest extra fee for such title transfers would have been worthwhile.

Unfortunately, many trustors like your mother "forget" to follow through by transferring the titles of their real estate and other assets such as bank accounts, stocks and bonds into their living trusts. In other words, your mother's living trust was worthless because it contained no assets when she died.

**Q:** My late husband and I owned a farm together. We intended to put its title into our living trust, as you often recommend. After the living trust was drawn up by our lawyer, I recall signing some sort of a deed. I thought it was to transfer title to our farm into our living trust. Somehow, my late husband never signed that deed (which was recorded).

Now, I recently learned my late husband's half of the farm property must go through the local probate court because it was not deeded into our living trust. The attorney who prepared our living trust is dead. To make matters even worse, we own two properties in Florida that apparently were never deeded into our living trust, so they must go through probate in Florida, necessitating hiring another lawyer in Florida.

Is there anything I can do to avoid all these legal costs and delays?

**A:** Your situation shows what can go wrong with living trusts when prepared by inept lawyers. If you and your late husband were co-owners of your property, but he never signed the quitclaim deed to your joint living trust, his share never became part of the living trust.

As for the Florida properties that were never transferred into your living trust, the bad result is that you must hire a Florida lawyer to probate these properties. You could have avoided all these costly problems if title to your properties had been correctly deeded into the living trust. For more details, please consult your attorney.

The scenarios described in the above excerpts, not at all uncommon situations, raise numerous questions. In the case of the mother who died with an unfunded living trust, did the attorney who drafted the trust advise her of the need to transfer the assets into the trust? Did the mother negotiate a lower attorney's fee for preparing the trust by assuming responsibility for funding it herself? Concerning the surviving spouse whose out-of-state properties were not funded into a joint trust before her husband's death, why would a probate in the foreign jurisdiction be required if the properties were jointly owned? If the late husband were the sole owner of the Florida properties, did the couple inform their attorney about the existence of the properties? Did their attorney inquire about the full extent of their real estate holdings when the trust was prepared? How was the lack of signature on the recorded deed to their farm property overlooked?

If the drafting and execution of the trust is considered the essential legal product, and the funding of the trust is regarded as an afterthought, problems such as those described in the foregoing excerpts will result. To provide the most effective service to the trust client, the completed living trust package should encompass the planning, drafting, execution, and funding of the trust. Moreover, the funding of the trust should be taken into consideration from the commencement of the planning process. The trust may contain particular assets that require special provisions to be inserted into the trust at the drafting stage. Funding documents that transfer title of assets to the trust can be executed immediately after the trust agreement. Finally, the client's estate planning matter should not be considered complete until the transfers to the trust of all the intended trust assets have been made and confirmed.

## A. SCOPE OF THE BOOK

This book is designed as a handbook for attorneys and their staff members to use in supervising and accomplishing the funding of their clients' living trusts. After a brief discussion of the types and purposes of living trusts, the book addresses important threshold issues, such as the importance of funding, the roles of the attorney and the client in trust funding, and the necessity for retitling assets in the name of the trust. The book then examines several basic general funding considerations and provides an overview of the funding process. Because different assets raise different transfer issues, the funding of specific assets is then addressed in detail.

It should be emphasized that there is little standardization when it comes to funding living trusts. Several factors contribute to the lack of uniformity of practices among attorneys in this area. The most obvious point is that the transfer of virtually all assets to a living trust is governed by the state law of conveyancing for each particular type of property. The different state laws account for some of the variation in funding practices. Another element relates to the rules and practices of companies that control the retitling of various assets. For example, the requirements for transferring a bank account, brokerage account, share of stock, or life insurance policy depend on the institution, brokerage firm, transfer agent, or company involved. In many cases, a company's particular transfer form or application must be used in order for the transfer to be effective, and these forms vary widely. The experience and personal makeup of the individual attorney is also an important factor in how the attorney approaches funding decisions. Consider the question of seeking permission from a condominium association before transferring a condominium to a living trust. A new attorney or an attorney with a cautious bent may recommend that a client secure consent of the association in advance of the transfer of title. An attorney with twenty years' experience in this area may advise the condo owner that, as a practical matter, seeking the permission of the association is likely to be more trouble than it is worth. Moreover, if the condominium association finds out about the transfer and questions it, the matter can usually be satisfied by furnishing the association with the name of the person entitled to vote for the unit and any other information required. The procedures described herein are designed to indicate one or more ways that assets are funded into living trusts and to point out issues to consider before funding particular assets into a trust.

## B. LIVING TRUSTS

### 1. Trust Basics

Under the time-honored definition, an express trust is a relationship in which the trustee holds an interest in property subject to an equitable obligation to hold or use the property for the benefit of the beneficiary.[2] The key elements of a trust are: an intention to create a trust; a settlor; a trustee; the trust property; and a beneficiary.[3] A trust can be created during a settlor's lifetime or at the time of his or her death. If created during life, a trust is called a living or inter vivos trust, and the creator is referred to as the settlor, grantor, or trustor. A living trust is created by the execution of a trust agreement setting forth the terms of the trust. A trust created by will is called a testamentary trust, the creator is called the testator, and the terms of the trust are set forth in the will.

### 2. Revocable Living Trusts

In a trust-centered estate plan, the estate planning client's basic package includes a revocable living trust, a pour-over will, and a durable power of attorney. The revocable living trust is the core of the client's estate plan. The trust contains provisions for use of the income and principal during the settlor's lifetime and directions for disposition of the trust property upon the settlor's death. All or most of the client's assets are funded into the revocable living trust upon its creation. The revocable living trust is accompanied by a pour-over will. The will directs that any probate assets owned by the client at death are given to the acting trustee of the revocable trust. A durable power of attorney authorizes an attorney-in-fact to act on behalf of the client during his or her lifetime. The power of the attorney-in-fact survives the client's disability but terminates upon the client's death. The estate planning documents dealing with the client's property are typically supplemented by a health care directive and a living will, under which the client appoints individuals who can make health care decisions on his or her behalf under various circumstances.

The terms of a revocable living trust depend on the client's individual circumstances. If the client is an unmarried individual, the client is typically the settlor, trustee, and current beneficiary. In the capacity of trustee, the client is authorized to use the income and principal of the trust for his or her own benefit. The trust agreement nominates successor trustees to serve upon the client's incapacity or death and directs the disposition of the property remaining in the trust upon the client's death. The property can be distributed outright to the designated beneficiaries or held in further trust for their benefit. A husband and wife who do not require estate tax planning typically create a joint revocable living trust into which they transfer their individually and jointly owned assets. The husband and wife are the settlors, co-trustees, and beneficiaries during their joint lifetimes and the lifetime of the survivor. If one spouse becomes incapacitated or dies, the other spouse continues serving as the sole trustee. As in the case of an unmarried individual, the settlors of a joint trust nominate successor trustees and provide for the disposition of the trust property upon the death of the survivor. If a married couple requires estate tax planning, the customary

approach is for the couple to divide their property between two revocable living trusts. The husband is the settlor of one trust, and the husband and wife are the co-trustees and beneficiaries of the trust during the husband's lifetime. The wife is the settlor of the other trust, and the wife and husband are the co-trustees and beneficiaries of the trust during the wife's lifetime. Upon the death of the first spouse to die, the property in the trust can be split between a credit shelter trust to maximize use of the deceased spouse's applicable exclusion amount and a marital gift in trust or outright. In all cases, the settlor or co-settlors of the trust retain the right to amend or revoke the trust.

Revocable living trusts serve two important functions in an estate plan, one of which applies during the settlor's lifetime and the other of which transpires at death. A living trust eases the burdens on the settlor and his or her family in the event of the settlor's incapacity. If a person becomes incapacitated, that is, unable to transact business on his or her behalf, and no precautions have been taken in advance of the incapacity, then it is likely that a guardianship will have to be established under which a guardian is appointed by a court to manage the person's affairs. The rules for establishing and maintaining a guardianship of property depend on the applicable state law, but they have traditionally been regarded as rigid and costly to the guardianship estate. Moreover, the legal procedure required to determine incompetency inevitably exacts a personal cost on family members. Although a durable power of attorney can be useful upon incapacity of the principal, a living trust is the best method for handling potential incapacity. The settlor can serve as the trustee and beneficiary of the living trust during his or her lifetime for so long as the settlor remains competent. If incapacity occurs, the successor trustee named in the trust agreement assumes the management of the trust property for the benefit of the settlor-beneficiary without necessity for a formal guardianship.

The other main purpose of a living trust is to avoid probate of the assets owned by the trust upon the death of the settlor. Probate is the process by which assets owned by a decedent at death are formally transferred to the beneficiaries under the will. Typically, the personal representative appointed under the will identifies and collects the decedent's assets, pays the decedent's debts, expenses of administration, and taxes, and distributes the remaining assets to the intended beneficiaries. The probate process is generally supervised at each stage by a probate court and has traditionally been considered to be cumbersome and costly.[4] In contrast, when the settlor of a living trust dies, the successor trustee is already familiar with the trust assets because they are identified on the trust property schedule. The successor trustee pays the decedent's debts, expenses of administration, and taxes, and distributes the remaining trust assets to the beneficiaries. Although a trust administration parallels a probate, the trust administration is generally regarded as less costly and time consuming than a probate.[5]

Other advantages of a revocable living trust over a will may be important in particular contexts. For example, a revocable living trust affords privacy to a settlor and family because of the absence of court supervision of a trust administration. In contrast, the personal representative of an estate is required to offer the will for probate and file an inventory identifying the probate assets and their values. The probated will and the inventory become public records. In addition, use of a revocable living trust is

often recommended when it is anticipated that a client's dispositive scheme will be contested. Whereas a will does not operate until the testator dies, a revocable living trust takes effect immediately upon execution and funding and the trustee may serve for years until the settlor dies. Because the trust is already in existence at the settlor's death, there is a sense that the validity of the trust is more difficult to challenge than the validity of a will. Moreover, a state statute of limitations may limit the time period within which the validity of a trust can be challenged.[6]

The creation of a revocable living trust does not in and of itself achieve tax savings for federal income, gift, or estate tax purposes. Because the settlor of a revocable living trust retains the right to revoke the trust, the trust is considered a grantor trust for federal income tax purposes.[7] The income and other tax items of a grantor trust are included in the grantor's gross income as if the trust did not exist.[8] Transfers of property to a revocable living trust do not constitute taxable gifts for federal gift tax purposes.[9] When the settlor of a revocable living trust dies, the value of the property in the trust is included in his or her gross estate.[10] If estate tax planning is required, however, revocable living trusts, like wills, can incorporate measures to reduce estate taxes, such as credit shelter trusts and gifts to charity.

### 3. Irrevocable Living Trusts

A general rule of thumb in estate planning is that a trust should be revocable unless there is a specific reason to make it irrevocable.[11] The revocability feature preserves flexibility by giving a settlor the opportunity to amend or revoke a trust in light of changed conditions. The main purpose of irrevocable trusts in estate planning is to achieve federal income, gift, or estate tax savings. Each type of irrevocable trust is structured and funded to achieve the specific tax savings that the settlor needs or desires. The following examples illustrate some common types of irrevocable inter vivos trusts.

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**EXAMPLE: Irrevocable Life Insurance Trust**

H and W own assets with a combined value of $6 million. In addition, H owns an insurance policy that will pay $1 million at his death. If H owns the policy at his death, the entire $1 million will be included in his gross estate for federal estate tax purposes.[12] One strategy for H is to create an irrevocable life insurance trust and transfer the insurance policy to the trustee. The transfer of the policy constitutes a completed gift to the trust equal to the fair market value of the policy on the date of the transfer. The trust can be structured so that the gift will qualify for the annual gift tax exclusion; if there are not enough beneficiaries to cover the entire gift, then H will use up part of his gift tax applicable exclusion amount. H's future transfers to the trust to enable the trustee to pay premiums may also qualify for the annual gift tax exclusion. If H survives the three-year period following the date of the transfer, the life insurance proceeds will not be included in H's gross estate.[13] An insurance policy is a particularly ideal subject for lifetime giving because the value of the

policy for gift tax purposes is substantially less than the full amount of the proceeds that would otherwise be included in H's gross estate. By creating a trust to hold the policy and the insurance proceeds, H can make the proceeds available to meet any liquidity needs of his estate and can control the disposition of the proceeds in further trusts for the benefit of W and his descendants as H deems advisable.

### EXAMPLE: Charitable Remainder Trust

B, age sixty-three, recently retired from a career as a business executive. B receives a pension and other income from various investments. B is divorced and her adult children are married and self-supporting. B is involved with several philanthropic causes to which she plans to bequeath a considerable portion of her estate. Although B makes regular cash gifts to several charitable organizations, she does not feel comfortable making a substantial outright gift at this time. B created an irrevocable lifetime charitable remainder annuity trust under which she reserved the right to receive an annual annuity equal to 8 percent of the initial net fair market value of the assets transferred to the trust, for the duration of her life. Upon her death, the remaining trust property will be distributed to three named charitable organizations. In addition to the considerable pleasure B takes in announcing the charitable gifts while she is living, B also receives tax advantages. She funded the trust with highly appreciated shares of stock. If she sold the stock, she would have to pay a capital gains tax. By giving the stock to the charitable remainder annuity trust, B is eligible for an income tax charitable deduction equal to the value of the remainder interest in the trust.[14] The trustee can sell the stock without paying capital gains tax[15] and use the proceeds to invest in income-producing assets that will generate the annual annuity payments. When B dies, the value of the trust property will be included in her gross estate because of her retained interest, but an estate tax charitable deduction will be available for the full amount passing to the charities.[16]

### EXAMPLE: Trust for Minor Beneficiary

P and Q are the proud grandparents of several grandchildren ranging in age from two months to fourteen years. The couple's estate planning attorney has advised them of the strategy of making annual gifts to the grandchildren subject to the annual gift tax exclusion. One option to accomplish the gifts is to create an identical trust for each minor beneficiary. Under the terms of each trust, the trustee has discretion to use both the income and the principal for the benefit of the beneficiary. Each trust will terminate when the trust beneficiary reaches age twenty-one, unless the beneficiary elects to extend the term of the trust. If the beneficiary dies before attaining age twenty-one, all principal and income of the trust will be distributed to the beneficiary's es-

tate. Gifts to the trusts from P and Q will not be considered gifts of future interests and therefore will qualify for the annual gift tax exclusion.[17]

**EXAMPLE: Qualified Personal Residence Trust**

G, a sixty-five-year-old widower, has three children and several grandchildren. G has a considerable net worth and is concerned with minimizing his federal estate tax. G makes annual gifts to his children and grandchildren that are covered by the annual gift tax exclusion; G has not made any gifts to use up his unified credit. G owns a vacation home that he inherited from his parents and intends to leave to his children, who anticipate maintaining the family ownership for future generations. As an estate tax savings strategy, G creates an irrevocable trust that will terminate upon the earlier of his death or the end of a ten-year term. G transferred the vacation home to the trust. During the term of the trust, G is trustee of the trust and has the right to use the home. When the trust terminates, the home will pass to his children in equal shares. At that point, G will have no interest in or right to occupy the home. To use the home, G will have to pay rent to the children or visit as their guest. G made a completed gift of the remainder interest in the vacation home to his children when he transferred the property to the trust. The value of the gift is equal to the fair market value of the home at the time of the gift, reduced by the value of G's retained interest.[18] The value of the retained interest depends on the value of the property, the interest rate under Internal Revenue Service tables, the settlor's age, and the term of the trust. If the value of the gift is less than G's applicable gift tax exclusion amount, G will not have to pay any federal gift tax upon the transfer. If G survives the ten-year term, the home will not be part of his gross estate for estate tax purposes. Thus, by making a gift equal to a fraction of the home's fair market value, G will remove the entire value of the home, plus any postgift appreciation, from his gross estate.

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As discussed in Chapter 5, which addresses the funding of trusts with specific assets, numerous state and some federal laws limit the kinds of property that can be transferred to a trust as well as specify the required means for accomplishing a transfer. Because irrevocable inter vivos trusts are created primarily as tax planning vehicles, provisions of the Internal Revenue Code and accompanying Treasury Regulations often dictate some of the required terms of these trusts. The tax laws may also limit the types of property that can be funded into a particular irrevocable living trust without jeopardizing its intended purpose. For example, certain mortgaged property should not be transferred to a charitable remainder trust because the transaction violates the self-dealing rules applicable to charitable remainder trusts.[19] Similarly, the favorable treatment for qualified personal residence trusts is not available unless the property transferred to the trust is used or held for use as a personal residence of the holder of the term interest in the trust.[20] Thus, before funding property

into a particular irrevocable trust, the attorney should be familiar with all the terms and limitations required to achieve the desired tax results.

## C. THE INTEGRAL ROLE OF FUNDING

The critical role of trust funding cannot be overemphasized. In estate planning, every trust is created to accomplish one or more specific objectives. Moreover, every trust is designed to hold property that will be transferred to the trust either during the settlor's lifetime or at the time of death. The purposes of a trust cannot be accomplished unless the property that it was intended to hold is actually owned by the trust. Thus the funding of a trust is essential to achieving the settlor's objectives in creating the trust.

For example, the two main purposes of a revocable living trust are to provide for the possible incapacity of the settlor and to avoid probate at death. In order to accomplish both purposes effectively, all or most of the settlor's property must be transferred or funded into the trust before the event of incapacity or death. If a settlor becomes incapacitated, only the assets owned by the trust are available for management by the successor trustee. Assets still owned by the settlor individually are not subject to the successor trustee's authority and may require the creation of the guardianship that the trust was intended to avoid. A durable power of attorney may alleviate some, but likely not all, of the problems attendant upon a client's incapacity.[21] Similarly, assets owned individually by a settlor at death are subject to probate—the very process that the trust was intended to avoid. Although a pour-over will accompanies a living trust, a probate is required to pass the unfunded assets under the pour-over will into the trust following the settlor's death.

Funding is equally essential in the context of irrevocable living trusts. While the purposes of irrevocable trusts are various, the necessity of properly funding the trust remains constant. The purpose of an irrevocable life insurance trust, for example, is to remove the value of insurance proceeds from the insured's gross estate and thereby reduce estate taxes. The sole asset of the irrevocable life insurance trust is a life insurance policy that will either be transferred to the trust or newly purchased in the trust name. The trustee must hold the policy, pay the annual premiums using additional gifts made by the settlor, and receive and distribute the insurance proceeds upon the settlor's death. If the intended trust asset is an existing life insurance policy, the policy must be transferred to the trust and the trust must be designated as the beneficiary of the proceeds. If the appropriate steps are not taken to transfer ownership of the policy and change the beneficiary designation, then, notwithstanding the excellent planning and the executed trust document, the proceeds will be included in the settlor's gross estate at death. A trust for minors is typically created to make annual or periodic gifts in trust for the benefit of minor children and grandchildren using the annual gift tax exclusion. The advantage is that the donor's estate is depleted without incurring a gift or estate tax. To make a gift, a donor must relinquish dominion and control over the property to be given. Thus, unless the settlor of a minor's trust actually transfers money or other property to the trustee of the trust, a gift does not occur and the intended estate tax savings are not achieved. The sole asset of a qualified personal residence trust is residential property. The settlor's gift of a residence to the trust is the

key to a completed gift, on which depends the planned estate tax savings. To effectuate the gift, the settlor executes a deed to himself or herself as trustee of the qualified personal residence trust.

## D. COORDINATION BETWEEN ESTATE PLANNING DOCUMENTS AND FUNDING

When drafting trust and accompanying estate planning documents, the fact that one or more assets need to be transferred into the trust, presently and possibly in the future, needs to be taken into account. The two documents that require specific attention are the trust agreement and the durable power of attorney.

### 1. Trust Agreement

The estate planning attorney should be aware of the specific assets to be transferred to a living trust at its inception. If additions to the trust are authorized, the attorney should also anticipate that similar or different assets may be transferred to the trust in the future. In drafting a trust, therefore, an attorney should make sure that the trustee has the authority to hold and manage the assets that will or may be transferred to the trust.

A settlor chooses a trustee or successor trustee because of the settlor's confidence that the trustee is competent and trustworthy to manage the trust assets. As a consequence, the typical trust document incorporates a broad range of trustee powers intended to provide the trustee with basically the same ability to hold and manage the trust assets that the settlor himself or herself would possess. Particularly where a trust is designed to operate for many years into the future, the goal is to provide the trustee with the maximum degree of flexibility to manage the trust assets in the best interests of the beneficiaries and to handle anticipated or unforeseen circumstances. The powers of a trust are variously expressed. Some trusts incorporate the powers of trustees enumerated in a state statute,[22] while other trusts specifically list all the powers the settlor wishes to grant to the trustee.

The typical list of trustee powers is broad enough to accommodate most common trust assets. For example, real estate is a common trust asset, and most trustee powers cover the trustee's ability to sell, exchange, improve, lease, and mortgage real property. Certain assets, however, may require special attention. For example, a settlor may wish to fund a sole proprietorship or other closely held business into the trust. Because small businesses may not be considered suitable trustee investments under the rules governing fiduciary investments, the trust should expressly authorize the trustee to retain any assets transferred to the trust. The settlor may even express his or her desire that the trustee retain the business so long as the retention does not cause significant detriment to the trust and its beneficiaries.

### 2. Durable Power of Attorney

A client uses a durable power of attorney to empower an agent to act on his or her behalf. Unless revoked by the principal, a durable power of attorney survives the principal's incompetency but terminates upon the principal's death. A durable power of

attorney can be general, in that it authorizes a broad range of actions to be taken by the attorney-in-fact, or specific, in that it is tailored to a specific transaction or function. Some states permit a "springing" durable power of attorney that does not take effect until the incapacity of the principal.[23] Most states have statutes setting forth the requirements for a durable power of attorney, including language necessary for the power to survive the principal's disability and formalities for execution.[24]

If a settlor creates a trust but for some reason fails to fund property into the trust, the settlor can transfer the property into the trust when the omission is discovered. If, however, the settlor has become incapacitated, the question may arise whether an attorney-in-fact can transfer the settlor's property to the trust using a durable power of attorney. Unless a power of attorney expressly authorizes the attorney-in-fact to transfer the principal's property to the principal's revocable living trust, it may not be clear whether the attorney-in-fact has the authority to complete the trust funding.[25]

To make certain the settlor's intent, a durable power of attorney for a client with a living trust should include express language authorizing the transfer of assets to a living trust. There are many variations for the attorney to consider. Some attorneys provide authority for the attorney-in-fact to transfer assets to a revocable trust but not to an irrevocable trust. Some attorneys recommend use of a special durable power of attorney that deals solely with funding issues and specifically identifies the revocable living trust to which the assets may be transferred.[26] This approach has the advantage of specificity and therefore the power may be more acceptable to third parties. Other attorneys include the funding language as one of many powers granted to the agent under a general durable power of attorney. The following is sample language of such an express provision:

> I authorize my attorney-in-fact to transfer, assign, and convey any property or interest in property that I own to any trust of which I am a beneficiary and under the terms of which I expressly have the power, exercisable alone or with others, to amend or revoke such trust, whether such trust was created before or after the execution of this power of attorney.

The attorney may also wish to consider authorizing the attorney-in-fact agent to designate the trust as beneficiary of death benefits under retirement plans and life insurance policies.[27]

The primary limitation to using durable powers of attorney in general is the reluctance of third parties to recognize the authority of the attorney-in-fact. Institutions and firms routinely reject powers of attorney on various grounds, such as of lack of specificity, staleness, and concern that the power may have been revoked.

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### EXAMPLE: Durable Power of Attorney Rejected

M, an elderly widow, created a revocable living trust into which she transferred all her assets with the exception of her automobile. In M's state, a relatively simple procedure allows postdeath transfer of title to a decedent's

automobile by affidavit, so many settlors choose not to transfer their automobiles to their revocable trusts. M named her daughter, D, as successor trustee and as attorney-in-fact under a durable power of attorney. M thereafter suffered a stroke, and it became clear that she would no longer be able to drive. After arranging for a sale of M's vehicle, D went to the local Department of Motor Vehicles (DMV) to transfer title to the purchaser using the power of attorney from M. The DMV rejected the durable power of attorney, explaining that the department had its own form for power of attorney and only recognized that form. Fortunately, M soon recovered sufficient mental capacity to execute the title certificate herself. If M's condition has deteriorated, however, it is unclear whether the DMV could have been convinced to accept the power of attorney and, if so, how much time and effort on the part of D and M's attorney would have been devoted to pursuing the matter.

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Another risk associated with relying on a power of attorney is that the original power of attorney may be misplaced, lost, or unavailable to the attorney-in-fact. For example, in states that do not allow springing powers, a durable power of attorney becomes effective upon execution. The principal may be unwilling to deliver the power of attorney to the attorney-in-fact at that time. If the principal places the original power of attorney in a safe-deposit box along with his or her other estate planning documents, the attorney-in-fact may not be allowed access to the box to retrieve the document.

Thus, using a durable power of attorney to fund a trust should not be considered as an alternative to funding a trust when the trust is created. Rather, a durable power of attorney should be viewed as a possible avenue for funding assets that were omitted from a trust initially or assets acquired after the trust was created in the event of the settlor's incapacity.

## E. ROLES OF ATTORNEY AND CLIENT

The estate planning attorney and the trust client collaborate in the process of funding a living trust, with each party performing a vital role. The necessity for funding the trust, and the respective responsibilities of the attorney and client in the funding process, should be confirmed to the client in writing. As with all estate planning matters, the preparation and funding of a revocable living trust should be done in a timely fashion. If a client should become incapacitated or die before an estate plan is fully implemented, the attorney does not want the failure of the plan to be the result of his or her undue delay in pursuing the client's file. The potential adverse consequences of delay should also provide an incentive for the client's cooperation.

### 1. The Attorney's Role in Trust Funding

Practices vary considerably regarding the attorney's involvement in the funding process. At one extreme is the practitioner who prepares a trust and related documents for a client and, without preparing any of the funding documents, simply advises the client of the need to transfer all his or her assets into the trust. At the other end of

the spectrum is the attorney who views the trust client's matter as a package involving the initial planning advice, the preparation of the documents, and the preparation of the funding documents and oversight of the funding process. A common practice between the two extremes is to prepare the trust and related documents and also prepare a limited number of funding documents, such as the deeds for realty and a deed of gift for the untitled personal property.

There seem to be two recurring rationales expressed by practitioners who do not provide substantial funding assistance to trust clients. The first is that the funding of trusts is a simple matter that the client can handle without an attorney's assistance. The second is that preparing the funding documents and overseeing the funding process are too time consuming to accomplish considering the fee that can be charged to a trust client. Whereas experience in retitling hundreds of assets suggests that the first rationale is questionable, the concern about the attorney's reasonable compensation for the time spent overseeing the funding of a trust is legitimate when numerous assets are involved. Both considerations are discussed below.

Numerous factors affect a client's ability to carry out the funding process. First of all, some funding documents require a legal expertise that laypersons do not possess. Typical funding documents include deeds of real property, deeds of gift for personal property, and assignments of various property interests. Thus, certain assets are unlikely to get transferred to the trust unless the attorney prepares the applicable transfer documents. In addition, the retitling of numerous assets requires knowledge of legal issues with which a layperson is unfamiliar. Examples include restrictions on the funding of mortgaged realty, Section 1244 stock, and stock in professional corporations. Without an attorney's advice on these and similar issues, the client may unknowingly make an inadvisable or unauthorized transfer of property to a trust that may entail significant adverse financial or tax consequences.

Even in more routine funding matters, there are obstacles facing a client attempting to fund a trust. Clients vary considerably in their understanding of the trust arrangement, sophistication in business affairs, commitment to the process, and ability to persevere in frustrating circumstances. Even a competent and motivated client will encounter pitfalls that are likely to result in unfunded or incorrectly funded assets. For example, many funding issues require contact with an institution or company to request a procedure or form to effectuate a transfer. The first representative contacted may be unfamiliar with trusts and provide incorrect advice. The client may accept this information without challenging it or requesting to speak with a supervisor. Another potential area for mistakes concerns the proper signature format and verification required for various transfers. For example, a form to open a new brokerage account in the name of a trust may require a Medallion signature guarantee. A client may be unfamiliar with signature guarantees and submit the form without the guarantee. This will result in delay in funding the account into the trust. Moreover, many clients do not realize the importance of confirming requested changes. For example, the data from most forms and letters of instruction are entered into a computer by a company representative. The changed information appears on the next statement, report, or other communication from the company. Errors routinely occur in this data entry, with the result that the trust is not properly identified as the owner of the asset.

In contrast to a client, who may be involved in the funding of only a single trust

during his or her lifetime, the estate planning attorney has familiarity with all the intricacies of the funding process. The attorney can prepare the legal documents required, advise the client concerning any legal issues, guard against the wide array of potential errors and pitfalls, deal effectively with uncooperative or unknowledgeable company representatives, and confirm the asset transfers. By assigning the client specific tasks that only he or she can perform in the process rather than placing the entire responsibility on the client, the attorney is more likely to get the client's attention and cooperation and the funding is more likely to be completed in a timely manner.

The time required to fund a trust depends on the type of trust. The settlor of an irrevocable life insurance trust may need to transfer one or more policies to the trustee of the trust. In this context, it is clear that the limited amount of time involved in preparing the change of ownership and beneficiary forms and confirming that the changes were correctly made would dictate that the attorney handle the funding rather than risk potential errors that may occur if the client handles the transfer with the insurance agent or, even worse, does not ever effectuate the transfer. In contrast, the funding of the typical revocable inter vivos trust, which may involve numerous and varied assets, can unquestionably be a time-consuming matter.[28]

Many estate planning attorneys charge a flat fee for a trust matter, and the base flat fee should incorporate a reasonable amount for funding. Attorneys who routinely represent trust clients may find that funding matters within the base flat fee range tend to "average out." For example, one client may be an elderly widower with a home, a checking account, and a brokerage account. Another client may own a residence, a vacation home, a vacant lot, several bank and brokerage accounts, an individual retirement account, and a pension plan. Based solely on the number of assets, more time would normally be devoted to funding the second client's trust than to funding the first client's trust. This discrepancy will even out if both clients pay the base flat fee.[29]

An attorney using a flat fee for trust matters should charge a suitable amount over and above the base flat fee if the funding promises to be complex. Before recommending a trust and quoting a fee to an estate planning client, the attorney should become familiar with the nature and extent of the client's assets. Certain "red flag" assets alert an attorney to a potential complex funding process. Examples are stock in a corporation that the client holds in his or her own name and is unwilling to place in a brokerage account, partnership interests, and interests in closely held corporations. In addition, when a client owns a large number of assets, the attorney can assume that some of them will require extra attention in funding. In these cases, the attorney can anticipate at the outset that the funding will take additional time and quote a premium as part of the flat fee.

The estate planning attorney can somewhat reduce the time and expense associated with funding by developing and maintaining a funding forms file. The new attorney can begin by using the suggested forms in this book, adapted to incorporate the applicable state law requirements and the attorney's personal preferences and style. The forms should include all the common transfer documents, such as deeds and assignments, as well as accompanying cover letters. Each time the attorney encounters a new funding issue and develops a new form or letter, that document should be converted to a form and added to the funding forms file. Similarly, each time the attorney improves a form while working on a particular client's trust, the improvements

should be immediately added to the form so that future clients can benefit from the improvement. By diligently compiling a funding forms file, an attorney can save time and expense, and reduce errors, in preparing the documents required to fund a trust.

Another factor to consider is that the estate planning attorney does not need to be personally involved with all the details of the funding process. Rather, the legal service to the client in connection with funding a living trust is accomplished by a collaboration between the attorney and his or her legal assistant, secretary, or other staff member. The assistance of staff members is invaluable in drafting funding documents, contacting companies, completing forms, and coordinating with clients. By devoting time to training and supervising a staff member, an attorney can minimize the time he or she devotes to routine funding matters and thereby reduce the overall cost of providing this service.

Finally, the attorney may have to recognize that funding trusts will not be the most lucrative aspect of his or her practice. But this practical reality is not uncommon in estate planning. For example, the fee that an attorney can reasonably charge for preparing a will is typically less than (and may be well below) a fee based solely on the attorney's general hourly rate. Attorneys routinely accept this initial "shortfall" by anticipating a future generous fee for probating the deceased client's estate. Similarly, an attorney may decide to absorb some of the initial cost of funding a client's trust in anticipation of a future trust administration that can be quite profitable using either a flat fee or an hourly rate.

In summary, because of his or her training and expertise, the attorney is in a better position than the client to undertake and oversee the funding process. By taking the funding into account when setting a fee, by utilizing staff members to perform routine matters, and by acknowledging the inherent limitations in charging fees in this area, the attorney can maximize the productivity and profitability of funding services. Finally, considering the critical fact that a trust may be completely or partially useless to a client if the trust is not properly funded, the argument that estate planning attorneys should normally take the lead role in trust funding, assisted by the client at the appropriate stages, is compelling.

*Note:* There are numerous references in this book to steps that the estate planning attorney should take or issues that the attorney should consider. The reference to the attorney is intended to recommend that responsibility for the item mentioned be placed on the attorney rather than the client. In many cases, such items may be handled by the attorney's staff members under the attorney's supervision. Because there are so many variations in how an attorney and his or her staff will divide up the funding process, this book simply designates the attorney as the responsible party and leaves it to the individuals involved to decide when a particular duty will be performed by a staff member.

## 2. The Client's Responsibility

The client must be aware from the outset that the funding process is a joint effort in which both the attorney and the client play essential roles. No matter how diligent or thorough the estate planning attorney may be, there are steps in the funding process that the attorney cannot take on the client's behalf.

An attorney typically has either no or limited knowledge about the client's assets. The client must provide accurate and complete information about his or her assets in order for the funding process to begin. While the attorney may prompt a client's memory by suggesting typical categories of assets, it is ultimately up to the client to disclose the information. It is not uncommon for clients to recollect the existence of additional assets as the funding process unfolds. Examples of initial information that a client needs to provide include copies of recorded deeds and mortgages and statements for bank accounts, brokerage accounts, mutual funds, individual retirement accounts, and pension plans. Also required are copies of life insurance policies and annuity contracts. If a client owns an interest in a partnership, the client must provide a copy of the partnership agreement and any amendments so that the attorney can determine if a transfer is prohibited or requires consent of the other partners. If consent is required, the client must provide the attorney with the names of the other partners so that a consent form can be prepared. The client must deliver to the attorney any original bonds or stock certificates that are to be retitled in the name of the trust.

The client must execute numerous funding documents, some of which can be signed at the attorney's office and some of which must be signed elsewhere. For example, to retitle a checking or money market account with a bank, or open a new account in the trust's name, new signature cards must be signed. This is typically done by the client, who goes to the bank with a letter of instruction and signs new signature cards prepared by a bank representative. Similarly, if a Medallion signature guarantee is required on a change of ownership or other funding document, the client must go to a person authorized to make the required guarantee.

The client generally should be responsible for obtaining the required signatures of third parties. For example, if a checking account jointly owned by a client with a child is to be retitled in the name of a trust, the client should obtain the child's signature on the letter of instruction to the bank. In the partnership example referred to above, the attorney prepares a consent form, but the client is responsible for obtaining the signatures of his or her partners.

Trust account applications with brokerage firms generally include questions about features of the account that must be answered by the client rather than the attorney. Examples of such questions include whether the trust account will permit margin trading, whether the trustee desires Internet access to the account, and whether the trustee will need checks and debit or credit cards. The attorney should request the client to answer such questions rather than guessing what the client is likely to prefer. Any financial profiles required on brokerage applications should also be prepared by the client.

### 3. Communication between Attorney and Client

Communication between the estate planning attorney and the client is essential to the successful funding of a trust. If the attorney does not adequately explain the purposes of a proposed trust and the necessity for funding the trust, the client may be reluctant to devote the time and effort required to assemble accurate and complete asset information. Also, because the funding process will typically take at least a few months, it is important for the attorney and client to keep in touch during the pro-

cess. The worst impression a client can have is that the funding process is languishing in the attorney's office. One effective way to communicate with the client is to furnish him or her with copies of all letters prepared by the attorney during the funding process. The attorney should also conduct periodic progress reviews to ensure that the process is moving forward, that no additional information is required from the client, and that the client has taken any required steps.

## NOTES

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2. *See* Bogert and Bogert, THE LAW OF TRUSTS AND TRUSTEES § 1 (rev. 2d ed. 1984); RESTATEMENT (THIRD) OF TRUSTS § 2 (2003).

3. An express trust, which is intentionally created by the owner of property, is distinguished from a resulting trust or a constructive trust. A resulting trust is a trust that arises by operation of law in order to effectuate the presumed intention of the parties. A constructive trust is imposed in equity in order to prevent the unjust enrichment of a party possessing ownership of property that rightfully belongs to another. Ritchie, Alford, & Effland, DECEDENTS' ESTATES AND TRUSTS 435–36 (7th ed. 1988).

4. Various procedures are available to reduce the time and expense involved in a typical probate proceeding. For examples, an expedited probate for relatively small estates may be available. *E.g.*, TEX. PROB. CODE ANN. §137 (collection of small estates by affidavit); §143 (summary proceedings for small estates). Some states have an unsupervised probate that a person making a will may choose that will minimize the court's involvement in the process. *E.g.*, CAL. PROB. CODE § 10500(a) (independent administration); D.C. CODE ANN. § 20-406 (unsupervised personal representative); MONT. CODE ANN. §§ 72-3-201, 72-3-225 (informal probate); TEX. PROB. CODE ANN. § 145 (independent administration).

5. The estate planner should take care not to overemphasize the cost savings to be achieved by using a revocable living trust rather than a will. Some clients have the mistaken impression that, because a revocable trust avoids probate, there is little to do and few costs to pay when a settlor dies. In practice, while a trust avoids the expense and delay associated with the probate court's involvement in supervising an estate administration, in other respects a trust administration parallels the administration of an estate. Both a personal representative and a successor trustee must locate and value the assets, pay the debts and administration expenses, file any applicable tax returns, and distribute the remainder as provided in the will or trust. In Florida, the base statutory attorney's fee for a trust administration is 75 percent of the base statutory fee for a probate. FLA. STAT. ANN. § 737.2041(2). While the fee for representing a trustee is less than the fee for handling a probate, the fee for the trust administration is certainly not negligible.

6. *E.g.*, KAN. STAT. ANN. § 58a-604 (a proceeding to contest the validity of a revocable trust must be commenced within the earlier of one year after the settlor's death or four months after the trustee has sent the contestant a copy of the trust instrument and a copy of a notice containing specified information).

7. Under Internal Revenue Code (I.R.C.) § 676(a), a grantor is treated as the owner of any portion of a trust over which the grantor has the power to revest title to such portion in himself or herself.

8. I.R.C. § 671.

9. A gift of property is complete when the donor has parted with dominion and control over the property and does not have the power to change its disposition, whether for the benefit of the

donor or another. Treas. Reg. § 25.2511-2(b). If the donor of property reserves the power to revest title to the property in himself or herself, the gift is incomplete. Treas. Reg. § 25.2511-2(c).

10. I.R.C. § 2038(a).

11. In some states, a settlor may revoke or amend a living trust unless the terms of the trust expressly provide that the trust is irrevocable. *E.g.*, KAN. STAT. ANN. § 58a-602; NEV. REV. STAT. § 163.560. Conversely, in other states, an inter vivos trust is irrevocable unless the trust expressly provides that it is revocable. *E.g.*, N.Y. ESTATES, POWERS, & TRUSTS LAW § 7-1.16. Whatever the applicable rule, a trust instrument should always expressly state whether the trust is revocable or irrevocable.

12. I.R.C. § 2042.

13. *Id.* §§ 2035(a), 2042.

14. *Id.* § 170(f)(2)(A).

15. *Id.* § 664(c).

16. *Id.* §§ 2036(a), 2055(a)(2).

17. *Id.* § 2503(c). *See generally* George M. Turner, IRREVOCABLE TRUSTS chap. 8 (3d ed. 2002).

18. I.R.C. § 2702(a)(3)(A)(ii); Treas. Reg. § 25.2702-5(a)(1). For a sample qualified personal residence trust, see Rev. Proc. 2003-42, 2003-23 I.R.B. 993. *See generally* Baskies, "Understanding Estate Planning with Qualified Personal Residence Trusts," FLA. BAR J. 72 (Nov. 1999).

19. I.R.C. §§ 4941(d)(1)(A), 4941(d)(2)(A), 4947(a)(2).

20. I.R.C. § 2702(a)(3)(A)(ii); Treas. Reg. §25.702-5(b)(1).

21. The use of a durable power of attorney is discussed in Part D.2 of this chapter.

22. *E.g.*, COLO. REV. STAT. § 15-1-304.1 *et seq.;* MO. REV. STAT. § 456.520; N.H. REV. STAT. ANN. § 564-A:3; N.C. GEN. STAT. § 36A-136; ORE. REV. STAT. § 128.007.

23. *E.g.*, CAL. PROB. CODE § 4405; MONT. CODE ANN. § 72-5-501 (2001); N.M. STAT. ANN. § 45-5-501.

24. *E.g.*, FLA. STAT. ANN. § 709.08(1); N.H. REV. STAT. ANN. § 506.6; N.C. GEN. STAT. §§ 32A-1, 32A-8, 32A-9. In Oregon, a power of attorney is exercisable notwithstanding the disability or incompetence of the principal unless the power is limited by its terms. ORE. REV. STAT. § 127.005.

25. The Florida power of attorney statute expressly provides that an attorney-in-fact cannot transfer assets to an existing trust created by the principal unless expressly authorized by the power of attorney. FLA. STAT. ANN. § 709.08(7)(b)(5).

26. Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 11–12, 251–53 (2001). *See also* Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 246, 412–13 (1998).

27. Moy, *supra,* at 245–46.

28. Concerning the funding of a revocable living trust, one experienced commentator observed, "Clearly, counsel will be required to spend significant amounts of time discussing the matters on a practical level with banking institutions, title companies, brokerage firms, and other entities which may become involved in the transfer of assets owned by the clients to the Revocable Living Trust." Turner, REVOCABLE TRUSTS § 33.17 (4th ed. 2002).

29. The author once worked with an attorney who had the uncanny knack for attracting solely clients with large numbers of complex assets. While a great deal was learned assisting these clients with the funding of their trusts, the acquisition of this knowledge was not without financial cost. Obviously, the "averaging out" strategy discussed in the text would not apply to him and others like him.

CHAPTER 2

# Necessity for Formal Transfer of Title

A typical trust includes a schedule of property on which property that is transferred or intended to be transferred to the trust is listed. One question that may arise when a trust is executed is whether formal transfer of each asset is legally required. If simply listing the assets on a property schedule is sufficient to include the assets in the trust, then why proceed with the detailed and time-consuming process of formal transfers? Moreover, as more individuals are incorporating trusts as part of their estate plans, it is inevitable that intended asset transfers will not have occurred when the settlor becomes incompetent or dies, and the question will arise whether a listing on a property schedule or other indication of intent is sufficient to invest the trustee with legal title. The answer may depend on the identities of the settlor and the trustee. If a settlor declares himself or herself as trustee, the declaration itself may be sufficient to create a trust and a formal transfer of the property from the settlor to himself or herself, as trustee, may not be required. In contrast, when a settlor appoints another person to serve as trustee, a formal transfer of the property from the settlor to the trustee is generally considered mandatory.

## A. LEADING TREATISES

The concept that a formal transfer of property is not necessary when a settlor declares himself or herself as trustee is strongly supported by leading authorities, including the Restatement of Trusts and Bogert's leading treatise. The Second Restatement of Trusts was published in 1959, and the Third Restatement of Trusts was published in 2003. Because many of the cases in this area cite the Second Restatement as authority for their conclusions, both the Second and Third Restatements will be discussed.

The Second Restatement of Trusts contains several references to the effect of a declaration of trust. Section 17 provides methods for creating a trust, including: (1) a declaration of trust by the owner of property that the owner holds the property for the benefit of another person; and (2) a transfer by the owner of property to another person as trustee for the transferor or for a third person.[1] Notice that the first method requires a "declaration" to create a trust, whereas the second method requires a "transfer" of property. A comment to Section 17 states that, if the owner of property declares himself or herself the trustee of the property, "a trust may be created without a transfer of title to the property." The following illustration is provided:

> A, the owner of a bond, declares himself trustee of the bond for designated beneficiaries. A is the trustee of the bond for the beneficiaries. So also, the owner of property can create a trust by executing an instrument conveying the property to himself as trustee. In such a case there is not in fact a transfer of legal title to the property, since he already has legal title to it, but the instrument is as effective as if he had simply declared himself trustee.

Concerning the necessity of a transfer of title when a third party is named as trustee, Section 31 of the Second Restatement provides as follows:[2]

> If the owner of property makes a conveyance inter vivos of the property to another person to be held by him in trust for his own benefit and the conveyance is not effective to transfer the property, no trust is created.

Similarly, Section 32 of the Restatement provides as follows:[3]

> (1) Except as stated in Subsection (2), if the owner of property makes a conveyance inter vivos of the property to another person to be held by him in trust for a third person and the conveyance is not effective to transfer the property, no trust of the property is created.
> (2) If the conveyance is ineffective only because no trustee is named in the instrument of conveyance or because the person named as trustee is dead or otherwise incapable of taking title to the property, a trust is created.

A comment to Section 32 provides that, in the case of a declaration of trust, "a transfer of the property is neither necessary nor appropriate."[4]

Section 10 of the Third Restatement also provides for the creation of a trust by a declaration of trust, when the settlor is also the trustee, and by transfer of property, when a third party is named as trustee.[5] A comment to Section 10 makes it clear that a formal transfer of title is not necessary in the declaration of trust context.[6] The comment also discusses at length the use of "declaration" language and "transfer" language when the settlor is also the trustee. The comment provides:[7]

> [A]n owner of property may create a trust by executing an instrument worded either simply as a declaration of trust or as a transfer of the property to himself or herself as trustee. *** In neither [case] does the law ordinarily require acknowledgment or recordation, or other formal change in ownership records or documents of title, for the effective creation of the trust. Even additional statutory formalities, such as those applicable to transfers of land requiring that a document be sealed, attested, acknowledged, or recorded, ordinarily are

> not essential to effect a valid transfer as between transferor and transferee.

The comment specifically addresses the effect of references to a property schedule in the trust document as follows:[8]

> [E]xcept as precluded by statute, a trust may be established by the settlor's signing of an instrument that begins, essentially, "I hereby declare myself trustee of the property listed in Schedule A attached hereto" or "O, as settlor, hereby transfers to O, as trustee, the property listed in the attached Schedule A," even though in either case the document is not supported at the time of execution, or by the time of the settlor's death or incompetency, by other acts or other documents of transfer or title. *In short, the trust instrument may serve as an instrument of transfer (i.e., as a "deed" of gift or conveyance).* [Emphasis supplied.]

Section 16 of the Third Restatement addresses ineffective transfers to a third party trustee. Continuing the principle of Section 32 of the Second Restatement, Section 16 provides that, if a property owner undertakes to make an inter vivos disposition in trust by transferring property to a third party trustee, an express trust is not created if the property owner fails to complete the contemplated transfer.[9] While the language of Section 16 seems straightforward in that it requires an effective transfer to a third party trustee, a comment to Section 16 casts doubt on what constitutes an effective transfer and an ineffective transfer. Much of the commentary is based on the following illustration:[10]

> The owner of certain property executes and signs a writing stating that he thereby transfers that property to T in trust for B for life, with remainder thereafter to B's issue, and delivers the writing to T. In the absence of applicable statutory provisions requiring additional formalities, a trust is created.

In language that is destined to be quoted by countless attorneys faced with representing successor trustees of improperly funded trusts, the comment explains the illustration as follows:[11]

> Unless the contrary is expressly provided in an applicable statute, or is necessarily implied from its provisions, formalities prescribed for the creation of a recordable document, or otherwise for the protection of or from third parties, need not be satisfied in order to make a valid donative transfer, that is, one that is effective as between the transferor and the transferee(s). *** Good practice certainly calls for the use of additional formalities and the taking of appropriate further steps, such as changes of registration, or the execution and recordation of deeds to land. Nevertheless, *a writing signed by the settlor,*

> *or a trust agreement signed by the settlor and trustee, manifesting the settlor's present intention thereby to transfer specified property (such as all property listed on an attached schedule) is sufficient to create a trust.* [Emphasis supplied.]

The Second and Third Restatements of Trusts are consistent concerning a declaration of trust by a settlor, in which case a formal transfer of intended trust property is not required. In contrast, the Second Restatement appeared to require a formal transfer of property when a settlor names a third party trustee. Although the Third Restatement appeared to continue that policy in Section 16, the comment to Section 16 seems to blur the distinction between declarations of trust and transfers to third party trustees. In either context, it appears, a valid trust can be created if a settlor executes a trust agreement reflecting a present intent to hold, or have held by a third party trustee, specific property in trust.

Bogert's Law of Trusts and Trustees provides as follows:[12]

> It is sometimes stated that the transfer by the settlor of a legal title to the trustee is an essential to the creation of an express trust. The statement is inaccurate in one respect. Obviously, if the trust is to be created by declaration there is no real transfer of any property interest to a trustee. The settlor holds a property interest before the trust declaration, and after the declaration he holds a bare legal interest in the same property with the equitable or beneficial interest in the beneficiary. No new property has passed to the trustee. The settlor has merely remained the owner of part of what he formerly owned.

## B. CASE LAW

### 1. Settlor as Trustee

Cases from various jurisdictions have applied the rule that a formal transfer of property is not required when a settlor declares himself or herself as trustee.[13] For example, *Heggstad v. Heggstad*[14] involved an unmarried California resident who created a revocable inter vivos trust in 1989. Under the terms of the trust, the settlor named himself as trustee and his son as successor trustee. The son was also a beneficiary of the trust following the settlor's death. The trust property was identified on a schedule attached to the trust agreement. The pertinent part of the trust instrument provided as follows: "HALVARD L. HEGGSTAD, called the settlor or the trustee, depending on the context, declared that he has set aside and transfers to HALVARD L. HEGGSTAD in trust, as trustee, the property described in schedule A attached to this instrument." One of the assets identified on the schedule was an undivided interest in Menlo Park realty held by the settlor as a tenant in common. Although the settlor had formally transferred by deed other real properties identified on the property schedule, he did not execute a deed conveying the Menlo Park property to himself as trustee of the trust. After creating the trust, the settlor married and then died in 1990. Under California law, the surviving spouse was entitled to one third of the decedent's estate as an omit-

ted spouse; the surviving spouse did not claim any interest under the trust. During the administration, a question arose concerning whether the Menlo Park property was included in the decedent's estate or was part of the trust property. The successor trustee claimed that the Menlo Park property was an asset of the trust, whereas the surviving spouse contended that the property belonged to the estate in which she had an interest. The California appellate court upheld the probate court's decision that the property was owned by the trust. The California probate code specified options for creating a trust, including: "(a) A declaration by the owner of property that the owner holds the property as trustee," and "(b) A transfer of property by the owner during the owner's lifetime to another person as trustee."[15] Citing the California statute and the Second Restatement and Bogert authorities referred to above, the *Heggstad* court concluded that a written declaration of trust by the owner of real property naming himself as trustee is sufficient to create a trust in the property without the necessity of a separate deed transferring the property to the trust.[16] Two caveats were noted by the court. First, the declaration must satisfy the statute of frauds, which requires a writing signed by the trustee.[17] Second, the declaration of trust must be recorded in order to be effective as to strangers.[18]

The theoretical underpinnings for the position that a formal transfer of property is not required in the declaration of trust setting were discussed in *Taliaferro v. Taliaferro*.[19] The settlor created a revocable living trust in which he declared himself as trustee of all property described in an attached property schedule, appointed a successor trustee, named himself as the lifetime beneficiary, and designated the disposition of the trust property upon his death. The property schedule listed certain bank stock, a life insurance policy, and the settlor's tangible personal assets, none of which were ever formally assigned to the trust. After the settlor's death, the surviving spouse sought to have the trust declared invalid because she took a greater interest in the estate than under the trust. Citing the Restatement Second and Bogert authorities referred to above as well as the *Heggstad* case, the Kansas Supreme Court held that a settlor who establishes a trust by declaration need not formally transfer legal title to the trust property.[20] The *Taliaferro* court noted that the fundamental concept of trust law is separate ownership of equitable and legal interests in the trust property.[21] According to the court, when the settlor is the trustee, a transfer of the legal title to the intended trust property is not required because the settlor already holds legal title. The declaration that the property is held in trust by the settlor effectively conveys equitable title to the trust beneficiaries and accomplishes the required separation of legal and beneficial interests.[22]

When a settlor is also the trustee of a trust, a court may find that assets listed on a property schedule are included in the trust even if the language of the trust agreement contemplates formal title transfers. In *Samuel v. King*,[23] a settlor executed a trust agreement that expressed his intent "to create a revocable trust of the property described in Schedule A hereto annexed." The agreement further stated that the settlor "agrees to execute such further instruments as shall be necessary to vest the Trustee with full title to the property." Attached to the trust agreement were a property assignment and a schedule of assets. The property assignment, dated the same date as the trust agreement, stated that the settlor individually does "hereby sell, transfer, and convey" to the settlor, as trustee, the following assets: real estate, pickup truck, bank checking ac-

count, and miscellaneous personal property. The schedule of assets listed the four assets referred to in the property assignment, but described them in greater detail. The schedule of assets also listed two mutual fund accounts that were not referred to in the property assignment. The schedule listed the date of the trust and the property assignment as the date of transfer for each asset. The dispute arose between the settlor's daughters, both of whom were equal beneficiaries under the trust and one of whom was the sole beneficiary under a later will. The trial court held that the titled assets were never transferred to the trust but that the nontitled assets were subject to the trust. The appellate court distinguished between a transfer of the assets to the trust and a transfer of title to the assets to the trust.[24] According to the court, when the same individual is both settlor and trustee, a title transfer is not necessary.[25] The court concluded that the trust agreement and attached document unambiguously expressed and effectuated the settlor's intent to convey the assets listed on the schedule of assets to his trust.[26] The court emphasized both the present intent evidenced by the word "hereby" in the property assignment and the particularity of the asset descriptions in the schedule.[27] Because the court believed that title transfers were unnecessary when a settlor was also the sole trustee, the court did not address whether a condition precedent was created by the language in the trust agreement referring to the settlor's execution of further instruments necessary to transfer full title.[28]

Most of the cases applying the rule that a formal transfer of trust property is not required when a settlor declares himself or herself as trustee have two factors in common. The first is that the trust documents typically contain express language of declaration rather than transfer, that is, the trust agreement expressly declares the settlor as trustee rather than, or in addition to, stating that the settlor transfers property to himself or herself as trustee.[29] Second, in most cases the property in question is specifically identified either on a property schedule or within the trust document.[30] The reference to the property on the schedule or in the document makes clear the settlor's intention to include the property in trust. Absent a listing of the property on a schedule or in the trust itself, a court may look to other indications of intent, such as a statement or letter by the settlor expressing an intent to include property in a trust or actions taken by the settlor that are consistent with holding the property in trust.[31] Concerning the significance of the two common factors, it is not clear from the case law whether the declaration of trust language is a prerequisite to applying the rule of these cases or whether it is sufficient that the settlor is the trustee of the trust without regard to the particular wording.[32] The Third Restatement of Trusts takes the position that a formal transfer of title is not necessary regardless of whether the settlor uses language of declaration or language of transfer.[33] Regarding the second factor, however, a manifestation of the settlor's intent to include specific property in the trust is essential.

While the rule that allows a settlor to declare himself or herself trustee of property without formally retitling the property may be conceptually sound, the rationale does not hold up when a settlor declares himself or herself co-trustee of property with a third party. For example, in *Estate of Harvey v. Luther College*,[34] Harvey owned a certificate of deposit in his individual name. Harvey executed a revocable trust agreement under which he purported to transfer, convey, and deliver all property listed on an attached property schedule to himself and Luther College as co-trustees. Harvey then

gave possession of the certificate to Luther College, noting on the certificate that it was not to be cashed without his permission. The certificate was not retitled in the names of the co-trustees. The court held that the certificate of deposit was not part of the trust but remained Harvey's individual property.[35] Noting that a declaration of trust may have sufficed if Harvey were the sole trustee, the court stated that a formal transfer of the certificate was required in order to vest title in the co-trustees.[36] In contrast, in *Bourgeois v. Hurley*,[37] a husband executed a declaration of trust naming himself and his wife as co-trustees of property to be transferred to the trust. Listed on a separate property schedule were shares of corporate stock registered in the husband's individual name. Citing the Second Restatement and Bogert authorities discussed above as well as other case law, the court stated that a person may create a trust in securities standing in the person's name by a simple declaration without the necessity of further act of transfer or delivery.[38] The court held that the stock was part of the trust, without addressing the issue of the vesting of legal title in the wife as co-trustee.[39] Because each trustee should hold a legal interest in the trust property for the benefit of the beneficiaries, the result in *Estate of Harvey* seems sounder than the outcome in *Bourgeois*.

## 2. Third Party as Trustee

The case law also supports the necessity for a formal conveyance of property when the trustee is a third party rather than the settlor.[40] For example, *Dahlgren v. First National Bank*[41] involved a settlor who created a trust naming a corporate fiduciary as trustee. Under the terms of the trust, a condominium was to be distributed to a named beneficiary. The title to the condominium, however, was not transferred by deed to the trustee during the settlor's lifetime. As a consequence, the condominium did not become part of the trust property.[42] The result was that the condominium was distributed to the settlor's intestate heirs rather than to her intended trust beneficiary.[43]

*Ballard v. McCoy*,[44] another case illustrating the necessity of a formal transfer of property to a third party trustee, is interesting due to the context in which it arose. The settlor signed an inter vivos trust in the form of a letter agreement and named his niece and her spouse as trustees. In the letter, the settlor stated, "I transfer to you all my right, title and interest in the property described on Schedule A attached." The agreement also expressly provided that the trust would become effective when the settlor and trustees signed the agreement and the settlor delivered property to the trustees. The trust contained provisions for the disposition of the income and principal during the settlor's life, for delivery of the trust principal to his personal representative at his death, for his care in the event of incapacity, and for compensation of the trustees. Attached to the trust agreement was a list of stocks, bonds, and other intangible property that was intended to form the initial trust corpus. None of the listed assets was retitled in the names of, or physically delivered to, the trustees. Following the settlor's death, the trustees filed a claim against his estate for trustee fees, calculated as a percentage of the value of the listed assets and the income received therefrom by the settlor and his wife from the signing of the trust agreement through the date of death. Although the trial court allowed the fees, the appellate court reversed the award, on the ground that a valid trust was never established because the settlor did

not transfer any assets to the trustees.[45] Based on the terms of the trust, delivery of property to the trustees was a condition precedent to the creation of the trust, and the condition was not fulfilled by the settlor during his lifetime.[46] Because there was no trust, there could be no fee for services rendered on behalf of the trust.[47]

## C. STATE STATUTES

The necessity for a formal transfer of property to an inter vivos trust may be addressed by state statute. Like the authorities quoted above, some state statutes distinguish between a declaration of trust by a property owner and a transfer of property by the owner to a third party trustee.[48] In contrast, a New York statute expressly addresses the funding of lifetime trusts as follows:[49]

> A lifetime trust shall be valid as to any assets therein to the extent the assets have been transferred to the trust. For purposes of this section, (a) transfer is not accomplished by recital of assignment, holding or receipt in the trust instrument, and (b) in the case of a trust of which the creator is the sole trustee, transfer shall mean in the case of assets capable of registration such as real estate, stocks, bonds, bank and brokerage accounts and the like, the recording of the deed or the completion of the registration of the asset in the name of the trust or trustee, and in the case of other assets a written assignment describing the asset with particularity.

Thus the New York statute requires a formal transfer of assets to a living trust and expressly repudiates the rule that a formal transfer is not required when the owner of property declares himself or herself trustee of the property for the benefit of another.

## D. PRACTICAL CONSIDERATIONS

From a planning perspective, the goal in funding a trust should always be a formal transfer of title to each intended trust asset by deed, assignment, or other appropriate document. Even when a settlor declares himself or herself as trustee, the appropriate transfer document should be prepared and properly executed. The formal procedure leaves no doubt respecting the settlor's intention and eliminates the necessity of a post-incapacity or postdeath lawsuit to determine the status of the property.[50]

As noted above, numerous authorities hold that a formal transfer of property is not required when a settlor declares himself or herself as trustee. Moreover, the Third Restatement of Trusts takes the position that, even when a third party trustee is named, the trust agreement itself can serve as a transfer document sufficient to create a trust. These authorities raise an interesting practical consideration for the estate planner representing a trust client. The question presented is whether, when a settlor is also trustee, the attorney should incorporate the two factors discussed above—declaration language and property schedule references of unfunded assets—into the client's trust from the outset so that, in the event that intended trust assets for some reason do not get formally transferred to the trust, a court might apply the rule that a

formal transfer is not required in order to accomplish the settlor's intent. Further, in view of the position taken by the Third Restatement, should unfunded assets be listed on the property schedule even when a third party is named trustee in the hope that a court might view the trust document itself as an instrument of transfer?

While formerly trust documents were often titled "Declaration of Trust," modern practice tends to use titles such as "Trust Agreement" and "Irrevocable Life Insurance Trust." The typical trust today begins with language such as the following: "I, Sam Smith, hereby transfer to myself, as trustee, the property identified in the attached Schedule of Property." Although it is unlikely that the declaration language is essential to use the rule that a formal transfer is not necessary when the settlor is the trustee, it would be easy to substitute declaration language for transfer language in a trust agreement. Thus the trust would provide as follows: "I, Sam Smith, hereby declare myself trustee of the property identified in the attached Schedule of Property." The declaration language is inappropriate when a third party trustee is named.

Concerning the property schedule, some attorneys prepare a property schedule listing all assets that a settlor intends to transfer to a trust, while other attorneys limit the items listed on the schedule to those assets that have been formally conveyed or assigned to a trust.[51] If an attorney wishes to preserve the ability for the successor trustee to make an argument that a formal transfer of property was not necessary under a common law or statutory rule, the attorney could list all a client's assets on a property schedule irrespective of whether the attorney had confirmation that each was formally transferred to the trust at the initial trust funding. Alternatively, the attorney could add to the schedule a special category of assets titled "Property Intended by the Settlor to Be Property of the Trust but Not Formally Transferred to the Trust at Initial Trust Funding." The attorney could also encourage the settlor to add subsequently acquired assets to the schedule upon their acquisition. Clients are notoriously forgetful of taking title to new assets in the names of their trusts; they may be more amenable simply to listing the asset on the property schedule.

Listing unfunded assets on a property schedule should be viewed not as a primary funding method but rather as a backup step taken in the hope that an argument based on the settlor's intent may convince a court to include improperly funded assets as part of a trust. A court order is likely to be required if this strategy is to prevail, entailing delay in the trust administration and additional litigation expenses. The preferred and proper funding method is to transfer title to each asset using the particular transfer document applicable to that asset. Of course, in a state such as New York, which requires formal title transfers by statute, listing unfunded assets on a property schedule would be unnecessary.

## NOTES

1. RESTATEMENT (SECOND) OF TRUSTS § 17 (1959).
2. *Id.* § 31.
3. *Id.* § 32.
4. *Id.* cmt. m.
5. RESTATEMENT (THIRD) OF TRUSTS § 10(b)-(c) (2003).
6. *Id.* § 10, cmt. e.

7. *Id.*

8. *Id.*

9. *Id.* § 16(1).

10. *Id.* cmt. b, illus. 5.

11. *Id.* cmt. b. The Reporter's Note to Section 16 of the Third Restatement states that Section 16 and its commentary "attempt to simplify, clarify, and (in some cases) extend, and to provide rationale and coherence for, situations and principles" previously discussed in Sections 31–32 of the Second Restatement. *Id.* § 16.

12. Bogert, THE LAW OF TRUSTS AND TRUSTEES § 141 (rev. 2d ed. 1984).

13. *E.g.*, *Medical Center Bank v. Keller (In re Keller)*, 62 Bankr. 108 (S.D. Tex. 1986) (where a settlor declared herself trustee of interests in limited partnerships and joint ventures for the benefit of her children, a valid trust was created even though the interests were not retitled in the trustee's name); *Wilkerson v. McClary*, 647 S.W. 2d 79 (Tex. App. 1983) (where a settlor declared herself trustee of certain realty, stocks, and household furnishings, a valid trust was created even though the properties were not retitled in the trustee's name). The rule stated in the text has also been applied when two individuals declare themselves co-trustees of jointly owned property. *E.g.*, *Brevard County v. Ramsey*, 658 So. 2d 1190 (Fla. App. 1995) (where a husband and wife declared themselves co-trustees of real property for the benefit of their wholly owned corporation, the trust was valid even though the property was not formally conveyed to the trust by a recorded deed). *See also Parker v. Powell*, 100 Cal. Rptr. 2d 501 (Ct. App. 2000) (where husband and wife created a revocable living trust and named the wife as trustee, jointly owned real property listed on a trust property schedule was considered trust property even though the property was not formally transferred to the trust by a recorded deed).

14. 20 Cal. Rptr. 2d 433 (Cal. App. 1993).

15. CAL. PROB. CODE § 15200.

16. 20 Cal. Rptr. 2d at 435–36.

17. *Id.* at 435.

18. *Id.* at 436, n. 7.

19. 921 P. 2d 803 (Kans. 1996).

20. *Id.* at 808–11.

21. *Id.* at 809.

22. *Id.*

23. 64 P. 3d 1206 (Ore. App. 2003).

24. *Id.* at 1210.

25. *Id.*

26. *Id.* at 1211.

27. *Id.* The court discounted the significance of the discrepancy between the "Schedule A" referred to in the trust agreement and the "Schedule of Property" attached to the trust, stating that it was clear that the Schedule of Property was the Schedule A mentioned in the trust document.

28. In contrast, *Ballard v. McCoy*, 443 S.E. 2d 146 (Va. 1994), involved a settlor who executed a trust agreement naming two other individuals as co-trustees. The agreement provided that the trust is established when signed by the parties and when the settlor has delivered property to the co-trustees. A list of properties intended to form the initial trust properties was attached to the agreement. The court held that the transfer of title to the assets was a condition precedent to the creation of the trust.

29. *E.g.*, *Taliaferro v. Taliaferro*, 921 P. 2d 803, 806 (Kans. 1996) (settlor declared the establishment of a trust, that he had appointed himself as trustee, and that he held the property in trust); *Brevard County v. Ramsey*, 658 So. 2d 1190, 1192 (Fla. App. 1995) (trust document titled "Declaration of Trust"); *Wilkerson v. McClary*, 647 S.W. 2d 79 (Tex. App. 1983) (declarations of trust). In *Heggstad v. Heggstad*, 20 Cal. Rptr. 2d 433, 434–35 (Cal. App. 1993), the trust document used language of decla-

ration and transfer. The trust stated that the settlor "declares that he has set aside and transfers" to himself, as trustee, property listed on a schedule. *See also Bourgeois v. Hurley*, 392 N.E. 2d 1061 (Mass. App. 1979) (language of declaration and transfer). *See Medical Center Bank v. Keller (In re Keller)*, 62 Bankr. 108, 110–11 (S.D. Tex. 1986) (oral trust treated as a declaration of trust by the settlor).

30. *E.g., Taliaferro v. Taliaferro*, 921 P. 2d 803, 806–07 (Kans. 1996) (bank stock, life insurance policy, and tangible personal property listed on a property schedule referred to in the trust); *Parker v. Powell*, 100 Cal. Rptr. 2d 501, 506 (Ct. App. 2000) (real property listed on property schedule attached to trust); *Brevard County v. Ramsey*, 658 So. 2d 1190, 1192 (Fla. App. 1995) (legal description of real property set forth in trust document). In *Bourgeois v. Hurley*, 392 N.E. 2d 1061 (Mass. App. 1979), securities intended as trust assets were listed on a schedule that was appended to the trust document, although the trust itself did not contain an express reference to a property schedule. The co-trustees segregated the securities from the settlor's personal assets and deposited dividend and interest checks into a separate checking account titled in their names as co-trustees. The court held that the property schedule and the co-trustees' subsequent actions made it clear that a trust of the securities was intended. *Id.* at 1064–66. In *Heggstad v. Heggstad*, 20 Cal. Rptr. 2d 433 (Cal. App. 1993), the property in question was listed on a property schedule as "Partnership interest in 100 Independence Drive, Menlo Park, California." In fact, the settlor's interest in the property was held in the form of a tenancy in common rather than in partnership form. Notwithstanding the mislabeling of the interest, the *Heggstad* court concluded that the Menlo Park property was part of the trust. *Id.* at 436, 438.

31. *E.g., Medical Center Bank v. Keller (In re Keller)*, 62 Bankr. 108, 110 (S.D. Tex. 1986) (oral trust of interests in limited partnerships and joint ventures valid where settlor advised all persons and entities involved in the partnership and ventures that she had established a trust for her children).

32. In *Taliaferro v. Taliaferro*, 921 P. 2d 803, 908 (Kans. 1996), the court stated that a transfer of legal title is not required when the settlor and the trustee are the same person because the settlor already holds legal title. The key question instead is whether an equitable interest has passed from the settlor to a beneficiary. In *Taliaferro*, the declaration of trust itself was considered a conveyance of an equitable interest. If some action other than a declaration of trust, such as a reference to property on a property schedule, is also sufficient to constitute the transfer of an equitable interest, then the declaration of trust language may not be essential.

33. RESTATEMENT (THIRD) OF TRUSTS § 10, cmt. e (2003).

34. 802 S.W. 2d 585 (Mo. App. 1991).

35. *Id.* at 588.

36. *Id.*

37. 392 N.E. 2d 1061 (Mass. App. 1979). *See also Aiello v. Clark*, 680 P. 2d 1162 (Alaska 1984) (where a mother created a trust and named herself and her daughter as co-trustees, an undivided interest in a promissory note was held to be trust property because it was listed on a trust property schedule attached to the trust agreement, notwithstanding the absence of a formal assignment of the note to the trust).

38. 392 N.E. 2d at 1065.

39. *Id.* at 1065–66.

40. *E.g., Eggleston v. Colorado*, 636 F. Supp. 1312 (D. Colo. 1986), *rev'd on other grounds and remanded*, 873 F. 2d 242 (10th Cir. 1989) (irrevocable trust established by drug dealer to preserve funds to pay his federal income tax liability and to defeat other federal, state, and creditor claims was invalid because the settlor never transferred the intended trust property to the third party trustee and because enforcement of the trust would be contrary to public policy); *Crane v. Tambourine (In re Glenview Imports, Ltd.)*, 27 B.R. 496 (N.D. Ill. 1983) (where an import business named a third party as trustee for certain beneficiaries and the trust agreement provided that the settlor would deliver title to all automobiles in its possession to the trustee, the trust failed because title to the automobiles was never transferred to the trustee); *Estate of Wittmond*, 732 N.E. 2d 659 (Ill. App. 2000) (where sett-

lor executed a deed of real property to the corporate trustee of a land trust and left the executed deed in the custody is his attorney with instructions not to record it, the realty was not part of the land trust because the settlor did not deliver the deed to the trustee); *McCormick v. Brevig*, 980 P. 2d 603 (Mont. 1999) (where settlor executed an irrevocable trust designed to hold certain partnership interests and named his daughter as trustee, the trust failed because the partnership interests were not assigned to the trust); *Tyson v. Henry*, 514 S.E. 2d 564 (N.C. App. 1999) (where settlor executed a trust agreement naming a third party, no express trust was created because no property was ever transferred to the trustee); *Papale-Keefe v. Altomare*, 647 N.E. 2d 722 (Mass. App. 1995) (where settlor signed an endorsement to his share certificate in a business trust to transfer the beneficial interest to another trust, and the certificate was found after the settlor's death in the records of his accountant with no explanation of its presence there, the purported transfer to the trust was ineffective because of the lack of delivery to the trustee). *See* Bogert, THE LAW OF TRUSTS AND TRUSTEES § 141 (rev. 2d ed. 1984). If an express trust fails because the settlor failed to transfer the intended trust property to a third party trustee, a resulting trust may be imposed for the benefit of the intended beneficiary if the settlor received valuable consideration for the creation of the trust. *E.g.*, *In re Snider Brothers, Inc.*, 12 Bankr. 87 (D. Mass. 1981) (where an employer agreed to transfer insurance policies to a third party trustee for the benefit of a valued employee in consideration for the employee's covenant not to compete and agreement to accept a lower current pay rate, but the employer failed to transfer the policies to the trustee, the express trust failed because legal title to the property was not transferred to the trustee but a resulting trust was imposed in favor of the employee). Similarly, if an express trust fails because the settlor wrongfully failed to transfer the intended trust property to a third party trustee, equity may impose a constructive trust as a means for forcing the settlor to convey the property. *E.g.*, *Shabeen v. Vassilakis*, 612 N.E. 2d 435 (Ohio App. 1992) (where a separation agreement required a divorcing husband and wife to transfer certain realty to a third party trustee for the benefit of their children and also required them to execute all deeds and other documents necessary to fulfill their obligations under the agreement, but the property was never deeded to the trustee, and the husband and the trustee subsequently agreed to sell the property to a third party, the express trust failed but a constructive trust was imposed so that the third party was entitled to specific performance). A valid transfer of property to a trustee is evidence of an intent to create a trust. *E.g.*, *Golleher v. Horton*, 715 P. 2d 1225, 1231–32 (Ariz. App. 1985) (trust agreement plus a transfer of real property by deed to a trustee constituted sufficient evidence for the trier of fact to conclude that the settlors intended to create a trust).

41. 580 P. 2d 478 (Nev. 1978).

42. *Id.* at 479.

43. *Id.* at 480.

44. 443 S.E. 2d 146 (Va. 1994).

45. *Id.* at 148.

46. *Id.* In the Reporter's Notes to Section 16 of the Third Restatement of Trusts, the Reporter views the express delivery requirement as the critical basis for the court's conclusion that a trust did not exist, speculating that absent the delivery requirement the letter agreement would have served as an instrument of transfer effective to create a trust. RESTATEMENT (THIRD) OF TRUSTS § 16 (2003).

47. 443 S.E. 2d at 148–49.

48. KANSAS STAT. ANN. § 58a-401; MONT. CODE ANN. § 72-33-201; NEV. REV. STAT. § 163.002.

49. N.Y. ESTATES, POWERS & TRUSTS LAW § 7-1.18.

50. Bogert's THE LAW OF TRUSTS AND TRUSTEES § 141 (rev. 2d ed. 1984) notes that, while a formal transfer of trust property is not necessary to the validity of the trust when a settlor declares himself or herself trustee of the property, the property should be retitled in the name of the settlor-trustee in order to avoid probate of the asset at the settlor-trustee's death. The Third Restatement of Trusts observes that ownership documents and records should be conformed "for practical

reasons." RESTATEMENT (THIRD) OF TRUSTS § 10, cmt. e (2003). *See Taliaferro v. Taliaferro*, 921 P. 2d 803 (Kans. 1996) (even if a formal transfer of property is not required to create a trust, as in the case of the settlor declaring himself or herself trustee of property, it is the "commended practice" to execute documents of transfer in order to remove uncertainty regarding the settlor's intent and to prevent a challenge to the trust as a testamentary disposition).

51. The property schedule is discussed in Part B of Chapter 3.

CHAPTER 3

# General Funding Considerations

## A. DESIGNATION OF TRUSTEE AS OWNER OR BENEFICIARY OF AN ASSET

### 1. Trust as Owner

Before considering in detail the transfer of specific assets to a trust, it is important to discuss how a trustee's ownership of property is expressed in general.[1] To identify a trustee as the owner of property, the document reflecting title to the asset should contain at a minimum the following information:[2]

- The name of the trustee identified by the term "trustee" or "as trustee" to indicate that the person or entity named is serving in a fiduciary capacity;[3]
- The title of the trust or, if there is no formal trust title, sufficient information to identify the particular trust; and
- The date of the trust.[4]

For example, assume that Joe Doe created a revocable living trust titled "Joe Doe Living Trust" on May 1, 2003, naming himself as trustee and his brother as successor trustee. Assets transferred to the trust should be titled in the name of the trustee as follows: *"Joe Doe, Trustee of the Joe Doe Living Trust, dated May 1, 2003."*[5] The incorporation of additional information into the ownership designation may be desirable. For example, some attorneys recommend that the phrase "or his or her successor in trust," in the case of a sole trustee, or "or their successors in trust," in the case of co-trustees, also appear in the title to trust property. Thus, property would be titled in the name of the trustee as follows: *"Joe Doe, Trustee, or his successor in trust, of the Joe Doe Living Trust, dated May 1, 2003."*[6] Some attorneys advise that property titled in the name of a trust should also include the identities of the trust beneficiaries. Thus, property would be titled in the name of the trustee as follows: *"Joe Doe, Trustee of the Joe Doe Living Trust, dated May 1, 2003, for the benefit of the Doe Family."*[7]

If a funding document is prepared by the estate planning attorney, then the title language can appear exactly as the attorney prefers. Often, however, banks, brokerage firms, life insurance companies, transfer agents, and other third parties are requested

to transfer title to assets. For example, a bank may be requested to retitle a checking account in the name of the trustee of a revocable living trust. Although the precise language recommended above may appear in the letter of instruction that the client presents to the bank representative, the bank may not follow exactly the wording requested. A bank or other third party may abbreviate terms in the requested title or omit words or phrases altogether. The abbreviations listed below are commonly used in titling property in the name of a trust:[8]

| Term | Abbreviation |
|---|---|
| Trustee | TTEE; TR |
| Trustees | TTEES; TRS |
| Dated | DTD |
| For the benefit of | FBO; F/B/O |
| Under agreement | UA; U/A |
| Under declaration of trust | UDT; U/D/T |
| January 5, 2004 | 01/05/2004; 1/5/04 |

In each case, the attorney must review the change made by the third party and determine whether the language used is adequate to ensure that the title is clearly in the name of the trustee rather than the client individually.

There are two basic patterns that the estate planning attorney will encounter when attempting to identify a trust. In the first setting, the trust instrument will expressly state the title of the trust. For these trusts, the stated title should be used for all identification purposes. In the second setting, the trust does not contain a formal title. In these cases, the attorney must extract sufficient information from the trust document concerning the settlor, the beneficiaries, and the trust purpose that will positively identify the particular trust.

The following examples illustrate the two basic patterns for purposes of trust identification.

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EXAMPLE: Revocable Trust Names Specified in Trust Document

On January 2, 2003, John and Mary Doe, husband and wife, each created a revocable inter vivos trust as part of their estate planning. Item I of Mary's trust provides as follows:

> This instrument, as from time to time amended, may be designated the "**MARY DOE TRUST AGREEMENT DATED JANUARY 2, 2003**," and the initial trust hereby evidenced, as from time to time amended, may be designated the "**MARY DOE TRUST DATED JANUARY 2, 2003**."

Item II of Mary's trust provides in part:

> The trustee shall distribute to me and **JOHN DOE** ("my spouse"), or apply for my or my spouse's benefit, such amounts of net income and principal, even to the extent of exhausting principal, as the trustee believes desirable from time to time for the health, support, and maintenance of myself or my spouse, considering all circumstances and factors deemed pertinent by the trustee.

Item IX of Mary's trust provides as follows:

> I name myself and my spouse as co-trustees of this trust. In the event I or my spouse fail or cease to act as a trustee hereunder for any reason, then the other one shall serve as sole trustee hereunder. In the event both I and my spouse fail or cease to act as trustee hereunder for any reason, I name any of the following to serve as successor trustee of each trust created under this instrument with preference in appointment to follow the order in which their names appear: my daughter, **JANE DOE**; my son, **JOE DOE**.

All property funded into Mary's trust should be titled as follows:

> MARY DOE AND JOHN DOE, Co-Trustees of the MARY DOE TRUST DATED JANUARY 2, 2003

### EXAMPLE: Irrevocable Trust Name Specified in Trust Document

On March 15, 2002, Joe Jones created an irrevocable life insurance trust as part of his estate planning. The preamble to Joe's life insurance trust provides as follows:

> I, **JOE JONES**, of County, State, hereby transfer and assign to **RELIABLE BANK AND TRUST, N.A.**, as trustee, the life insurance policies identified in the attached Schedule of Insurance.

Article I of Joe's trust provides as follows:

> This instrument may be designated the "**JOE JONES IRREVOCABLE INSURANCE TRUST AGREEMENT**," and the initial trust hereby evidenced may be designated the "**JOE JONES IRREVOCABLE INSURANCE TRUST**."

The life insurance policy purchased by Joe's trust,[9] as well as any related bank accounts, should be titled as follows:

> RELIABLE BANK AND TRUST, N.A., as Trustee of the JOE JONES IRREVOCABLE INSURANCE TRUST, dated March 15, 2002

**EXAMPLE: Trust Name Not Expressly Stated in Trust**

On December 1, 1989, Sam and Sue Smith created a revocable inter vivos trust as part of their estate planning. The title "Trust Indenture" appears at the top of the first page of the trust agreement. The preamble to the trust provides as follows:

> We, **SAM SMITH** and **SUE SMITH**, of County, State, hereby transfer to ourselves, as trustees, the property identified in the attached Schedule of Property.

Article II of the trust provides for the discretionary distribution of income and principal to Sam and Sue, or the survivor of them, during their lifetimes, and, upon the death of the survivor, for the division of the trust property among their children and grandchildren. Because the trust does not contain a formal title, the estate planning attorney must decide how much information from the trust will be required to identify the trust for funding purposes. All property funded into the Smiths' trust may be titled as follows:

> Sam Smith and Sue Smith, Co-Trustees, under Trust Indenture, dated December 1, 1989, executed by Sam Smith and Sue Smith, as Co-Settlors, for the benefit of Sam Smith and Sue Smith.

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One question that may arise is whether property can be titled in the name of a trust without reflecting the name of the trustee. For example, in the first example above, would it be acceptable to title trust assets under the name of "Mary Doe Trust Dated January 2, 2003," without indicating the names of the individual co-trustees? If a state statute specifically provides for title to real or personal property to be held in the name of a trust, then a designation that does not contain the name of the trustee may be sufficient.[10] Under traditional trust law, however, a trust creates a relationship between the trustee and the beneficiary with respect to the trust property. The creation of a trust involves the bifurcation of legal and equitable title to the trust property. The trustee holds legal title to the trust property while the beneficiary owns the equitable title.[11] The better approach is to include the name of the trustee in the title designation. This approach also has the practical advantage of putting third parties on notice concerning the individual or entity having authority to transact business on behalf of the trust.

The trust agreement may contain an express provision concerning the designation of the trust as the owner of property. The following is sample language of such an express provision:

**Recommended Title for Trust Assets.** Real property and tangible and intangible personal property transferred to, or purchased or otherwise acquired by, the trust may be titled as follows: Joe Jones and Jan Jones, Co-Trustees of the Jones Family Trust Dated May 3, 2003. Other title indications are permissible.

### 2. Trust as Beneficiary

The same considerations discussed above in connection with identifying a trustee as owner of property apply when designating a trustee as the beneficiary under a life insurance policy, annuity contract, retirement plan, or other arrangement requiring a designated beneficiary. An additional consideration applies, however, when a trust is a designated beneficiary. In estate planning, a designated beneficiary is generally intended to receive property at a future date. For example, the beneficiary under a life insurance policy receives the proceeds upon the death of the insured. Thus the designation of a trustee as beneficiary must anticipate that the trustee serving at the time of the designation may not be the trustee serving at the future date on which the trust receives the benefit. Thus the trust beneficiary may be expressed as "the acting trustee" of the identified trust. Alternatively, the trust beneficiary may be designated as the named successor trustee under the trust. On the other hand, if the initial trustee is a corporate fiduciary, then, even if the settlor is the insured, the corporate fiduciary can be identified in the beneficiary designation as the trustee because it is assumed that the corporation will continue indefinitely.[12]

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**EXAMPLE: Designation of Life Insurance Beneficiary**

On January 2, 2003, Joe Doe created a revocable living trust, naming himself as the initial trustee. Joe named daughter Sue Doe as the first successor trustee and, in the event that Sue cannot or will not serve, his son Jim Doe as the second successor trustee. Joe is the owner and insured under a whole life insurance policy and wishes to transfer ownership of the policy to his trust. On the company's change of ownership form, the new owner of the policy can be designated as "Joe Doe, Trustee of the Joe Doe Revocable Trust, dated January 2, 2003." On the change of beneficiary form, the beneficiary designation can be specified as "the acting trustee of the Joe Doe Revocable Trust, dated January 2, 2003." Alternatively, the beneficiary can be specified as "Sue Doe, as trustee, or any successor trustee, of the Joe Doe Revocable Trust, dated January 2, 2003."

## B. THE PROPERTY SCHEDULE

The typical living trust agreement refers to an exhibit or schedule attached to the trust agreement on which properties that the settlor has transferred, or intends to

transfer, to the trust are listed. The following examples illustrate references to a property schedule in a revocable living trust.

EXAMPLE: Schedule of Property

I, **GARY GRANTOR**, of First County, State, hereby transfer to the trustee named herein the property identified in the attached Schedule of Property. I have also caused or will cause the benefits under the annuities, retirement plans, and other sources identified in the attached Schedule to be made payable to the trustee. The trust property so identified and any property added to the trust in accordance with the provisions of this instrument, and all investments and reinvestments thereof ("trust principal") shall be held upon the terms that follow.

EXAMPLE: Schedule "A"

Trustor acknowledges that Trustor has acquired real, tangible, and intangible personal property and has determined to establish a Trust Agreement with the Trustee and has transferred to or is in the process of transferring the legal title of certain property to the Trustee, without consideration, which said property is described in Schedule "A" hereunto attached and by reference made part hereof.[13]

The property schedule is an attachment to the trust that is placed following the signatures of the settlor and trustee, notarizations, and, if applicable, the affidavit or certification. When a trust agreement is executed by a client, the schedule of property may contain a list of property that the settlor proposes to transfer to the trust or may be left blank until assets are actually titled in the name of the trustee and inserted onto the schedule.[14] During the funding process, the property schedule is finalized and the original schedule is attached to the trust agreement before the original document is delivered to the client.

The schedule of property should identify the property titled in the trustee's name as specifically as possible. The following are examples of descriptions of property on a property schedule of a revocable living trust:

(1) Real property located in First County, State, known as 123 Main Street, City, State 12345, more particularly described in that **Conveyance Deed to Trustee** dated May 3, 2003, and recorded in Official Records Book 1234, Page 5678, Public Records of First County, State, on May 15, 2003.
(2) Checking Account
    Account Number 123456789
    First Bank and Trust Company

501 Elm Street
City, State 12345

(3) Brokerage Account
Account Number 23456
Smith, Brown, & Jones
City, State 12346
800-123-4567

(4) Life Insurance Policy
Policy Number 23-456-789
National Life Insurance Company
789 Date Street
City, State 34567
800-456-7890
Note: Trustee also designated as primary beneficiary.

(5) All household furniture and fixtures, more particularly described in the Deed of Gift to Trustee, dated May 3, 2003, to the Trustee of the Gary Grantor Trust Dated May 3, 2003.

## C. REQUESTS FOR COPIES OF THE TRUST AGREEMENT

During the process of funding a client's assets into an inter vivos trust, third parties may request copies of the trust agreement. This is a reasonable request, to the extent that the third party is seeking confirmation of the existence of the trust, the names of the settlor and trustee, the powers of the trustee, and other pertinent information relevant to the transfer of title. The estate planning attorney should always be sensitive, however, to the fact that a trust agreement is a private document that will not require probate or any other public display either during the client's lifetime or at death. There are two possibilities for satisfying a request for a copy of the trust agreement without revealing the entire document. The attorney can offer copies of the relevant pages from the document or, if authorized by statute, present a certification of trust. If the third party nevertheless insists on receiving a complete copy, make sure to obtain the client's consent before releasing it.

### 1. Copies of Relevant Trust Pages

A third party will often accept copies of the relevant pages from the trust document in lieu of a copy of the entire trust agreement. The relevant pages include the first page, the page with the settlor's name, the pages on which the trustees and successor trustees are appointed, the pages on which the trustee powers are set forth, and the signature pages. For example, in order to fund a brokerage account into an inter vivos trust, a brokerage firm may provide a form to establish a trust account and also request a copy of the trust agreement. In response, the estate planning attorney can return the completed form to the brokerage firm, along with a copy of the relevant pages of the trust agreement. This will usually satisfy the firm's concerns regarding the specifics of the trust and it will typically not insist on receiving a copy of the entire document.

## 2. Statutory Certification of Trust

A state statute may authorize a trustee to present a certification of trust in lieu of providing a complete copy of the trust document. The statute will typically address the mandatory and permissible facts to be contained in the certification, set forth the additional facts and materials that may be demanded by the recipient of a certification, and contain a provision protecting recipients who rely on the certification.[15]

A certification of trust typically contains the following information:[16]

- The existence of the trust and the date on which the document was executed;
- The identity of the settlor(s) and the currently acting trustee(s);
- The powers of the trustee;
- The mailing address for the currently acting trustee(s);
- Whether the trust is revocable or irrevocable and, if it is revocable, the identity of any person having the power to revoke;
- Whether the trust can be modified or amended and, if so, the identity of any person having the power to modify or amend;
- If there is more than one currently acting trustee, whether all or a specified number of fewer than all of the trustees are required to sign in order to exercise the trust powers;
- The taxpayer identification number for the trust;
- The manner in which title to trust assets should be taken; and
- A statement that the trust has not been revoked, modified, or amended in any manner that would cause the representations contained in the certification to be incorrect.

The certification is not required to contain the dispositive provisions of the trust that set forth the distribution of the trust estate.[17]

The statutes vary concerning whether acceptance of a certification of trust is voluntary on the part of the third party. In Oregon, for example, although a third party may require the trustee to furnish excerpts from the trust agreement that relate to facts covered by the certification, the third party cannot require a trustee to furnish copies of the dispositive provisions or the entire trust agreement.[18] In California, a third party may reject a certification, but any person making a demand for the trust document in addition to a certification is liable for damages incurred as a result of the refusal to accept the certification in lieu of the document if a court determines that the person acted in bad faith in requesting the document.[19]

## 3. Copies of the Trust Agreement

Always secure the client's permission before furnishing a copy of the trust agreement to anyone, including even other family members who may be named as trustees, successor trustees, or beneficiaries under the document. If the estate planning attorney

feels comfortable with an oral request and consent by the client, whether in person or by telephone, a record of the conversation should be made and placed in the file. Written permission to furnish a copy of the trust agreement is another option. A letter to the client requesting permission to provide a copy of the trust to a third party appears in Figure 3.1.

On occasion, the estate planning attorney may be asked for a certified copy of a client's trust agreement. As the trust is not a public record, it is not possible to have a copy of the trust document officially certified by a clerk of court or other government official. Usually, it is sufficient if the attorney simply states in a letter that he or she certifies that the copy is a true and correct copy of the original trust agreement. A sample transmittal letter furnishing a certified copy of a trust document appears in Figure 3.2.

## D. SOCIAL SECURITY OR TAXPAYER IDENTIFICATION NUMBER

A social security or taxpayer identification number will be requested often during the funding process. The proper number generally depends on whether the trust is revocable or irrevocable.

A revocable trust is a grantor trust for federal income tax purposes because of the settlor's power of revocation.[20] A grantor trust is not considered a separate taxpayer for income tax purposes; rather, the settlor is treated as the owner of the trust, which means that the trust's income, deductions, and credits are reported as the settlor's own personal tax attributes.[21] Thus, when a revocable living trust is created, it is not necessary to apply for a taxpayer identification number for the trust.[22] The trust uses the social security number of the settlor. If there are two settlors, the trust may use the social security number of either settlor.

An irrevocable trust is generally a separate taxpayer from the settlor for federal income tax purposes.[23] When an irrevocable trust is created, the trustee should apply for a taxpayer identification number using Internal Revenue Service Form SS-4, titled "Request for Employer Identification Number." A sample completed copy of Form SS-4 is set forth in Figure 3.3.

In seeking to retitle various assets in the name of the trustee, the attorney may be asked to provide an Internal Revenue Service (IRS) Form W-9, titled "Request for Taxpayer Identification Number and Certification," for the trust. This is the standard IRS form on which taxpayers certify to third parties their correct taxpayer identification numbers. A sample completed copy of Form W-9 is set forth in Figure 3.4. Form W-9 is furnished to the person or company requesting the form rather than to the Internal Revenue Service.

## E. SIGNATURE FORMATS

The typical estate planning client owns an array of assets that require transfer to a revocable living trust. In many instances, an irrevocable living trust is created to hold a specific asset, which must be transferred to the trust. The transfers are accomplished

FIGURE 3.1

**Letter to Client**
**Requesting Consent to Furnish Copy of Trust Agreement**

Ms. Cathy Client
123 Flamingo Drive
City, State 12345

RE: Cathy Client Revocable Trust Dated May 1, 2003
Consent to Furnish Copy of Trust Agreement

Dear Cathy Client:

In connection with the retitling of your brokerage account with Brokerage Firm into the name of your trust, Brokerage Firm has requested a copy of your trust agreement. Although we offered copies of the relevant pages from the trust agreement in lieu of the entire document, Brokerage Firm's policy is to maintain a complete copy of the trust for every trust account. Although this policy is not typical, it is followed by some reputable firms and we do not regard the request as unreasonable.

We therefore request your permission to furnish Brokerage Firm with a complete copy of the trust agreement. Note, however, that we will not include a copy of your Property Schedule. Please indicate your consent by signing in the space indicated below and returning this original letter to us in the enclosed self-addressed envelope.

Please let us know if you have any privacy concerns about releasing a copy of your trust agreement to Brokerage Firm.

Yours very truly,

Ann Attorney

Enclosure

I, Cathy Client, hereby request Attorney to furnish
a complete copy of the Cathy Client Trust Agreement
Dated May 1, 2003 to Brokerage Firm:

_____ _____

Cathy Client Date

**FIGURE 3.2**

**Letter to Third Party**
**Furnishing Certified Copy of Trust Agreement**

Mr. Bob Broker
Brokerage Firm
123 Main Street
City, State 12345

RE: Cathy Client Revocable Trust Agreement Dated May 1, 2003
Certified Copy

Dear Bob:

We represent Cathy Client in connection with her estate planning. You have previously requested a certified copy of the above-referenced trust agreement.

Pursuant to Cathy Client's request, attached is a copy of the Cathy Client Trust Agreement Dated May 1, 2003. We hereby certify that the attached copy is a true and correct copy of the original.

Yours very truly,

Ann Attorney

Enclosure

cc: Cathy Client (without enclosure)

FIGURE 3.3

## Form SS-4, Application for Employer Identification Number

Form **SS-4** (Rev. December 2001)
Department of the Treasury
Internal Revenue Service

**Application for Employer Identification Number**
(For use by employers, corporations, partnerships, trusts, estates, churches, government agencies, Indian tribal entities, certain individuals, and others.)
▶ See separate instructions for each line. ▶ Keep a copy for your records.

EIN

OMB No. 1545-0003

Type or print clearly.

1 Legal name of entity (or individual) for whom the EIN is being requested
Tom Trustee, as Trustee of the Cathy Client Irrevocable Insurance Trust, Dated May 1, 2003

2 Trade name of business (if different from name on line 1)

3 Executor, trustee, "care of" name
Tom Trustee, Trustee

4a Mailing address (room, apt., suite no. and street, or P.O. box)
11 Pine Ave.

5a Street address (if different) (Do not enter a P.O. box.)

4b City, state, and ZIP code
City, State 12345

5b City, state, and ZIP code

6 County and state where principal business is located
County, State

7a Name of principal officer, general partner, grantor, owner, or trustor
Cathy Client, Trustor

7b SSN, ITIN, or EIN
123-45-6789

8a Type of entity (check only one box)
- ☐ Sole proprietor (SSN) _____
- ☐ Partnership
- ☐ Corporation (enter form number to be filed) ▶ _____
- ☐ Personal service corp.
- ☐ Church or church-controlled organization
- ☐ Other nonprofit organization (specify) ▶ _____
- ☐ Other (specify) ▶
- ☐ Estate (SSN of decedent) _____
- ☐ Plan administrator (SSN) _____
- ☑ Trust (SSN of grantor) 123 45 6789
- ☐ National Guard ☐ State/local government
- ☐ Farmers' cooperative ☐ Federal government/military
- ☐ REMIC ☐ Indian tribal governments/enterprises

Group Exemption Number (GEN) ▶ _____

8b If a corporation, name the state or foreign country (if applicable) where incorporated — State: _____ Foreign country: _____

9 Reason for applying (check only one box)
- ☐ Started new business (specify type) ▶ _____
- ☐ Hired employees (Check the box and see line 12.)
- ☐ Compliance with IRS withholding regulations
- ☐ Other (specify) ▶
- ☐ Banking purpose (specify purpose) ▶ _____
- ☐ Changed type of organization (specify new type) ▶ _____
- ☐ Purchased going business
- ☑ Created a trust (specify type) ▶ Irrevocable living trust
- ☐ Created a pension plan (specify type) ▶ _____

10 Date business started or acquired (month, day, year)
May 1, 2003

11 Closing month of accounting year
December

12 First date wages or annuities were paid or will be paid (month, day, year). Note: *If applicant is a withholding agent, enter date income will first be paid to nonresident alien. (month, day, year)* . . . . . ▶ N/A

| 13 Highest number of employees expected in the next 12 months. Note: *If the applicant does not expect to have any employees during the period, enter "-0-."* . . . . . ▶ | Agricultural | Household | Other |
|---|---|---|---|
| | 0 | 0 | 0 |

14 Check one box that best describes the principal activity of your business.
☐ Construction ☐ Rental & leasing ☐ Transportation & warehousing ☐ Health care & social assistance ☐ Wholesale-agent/broker
☐ Real estate ☐ Manufacturing ☐ Finance & insurance ☐ Accommodation & food service ☐ Wholesale-other ☐ Retail
☑ Other (specify) Hold and manage property

15 Indicate principal line of merchandise sold; specific construction work done; products produced; or services provided.
N/A

16a Has the applicant ever applied for an employer identification number for this or any other business? . . . . ☐ Yes ☑ No
Note: *If "Yes," please complete lines 16b and 16c.*

16b If you checked "Yes" on line 16a, give applicant's legal name and trade name shown on prior application if different from line 1 or 2 above.
Legal name ▶ Trade name ▶

16c Approximate date when, and city and state where, the application was filed. Enter previous employer identification number if known.

| Approximate date when filed (mo., day, year) | City and state where filed | Previous EIN |
|---|---|---|
| | | |

Third Party Designee

Complete this section only if you want to authorize the named individual to receive the entity's EIN and answer questions about the completion of this form.

| Designee's name | Designee's telephone number (include area code) ( ) |
|---|---|
| Address and ZIP code | Designee's fax number (include area code) ( ) |

Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete.

Applicant's telephone number (include area code) ( 321 ) 654-0987

Name and title (type or print clearly) ▶ Tom Trustee, Trustee

Applicant's fax number (include area code) ( )

Signature ▶ Date ▶ 5/1/2003

For Privacy Act and Paperwork Reduction Act Notice, see separate instructions. Cat. No. 16055N Form SS-4 (Rev. 12-2001)

FIGURE 3.4

## Form W-9, Request for Taxpayer Identification Number and Certification

Form **W-9** (Rev. January 2003)
Department of the Treasury
Internal Revenue Service

**Request for Taxpayer Identification Number and Certification**

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name
Cathy Client, Trustee of the Cathy Client Revocable Trust, Dated May 1, 2003

Business name, if different from above

Check appropriate box: ☐ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☑ Other ▶ Rev. trust ☐ Exempt from backup withholding

Address (number, street, and apt. or suite no.)
12 Main Street

Requester's name and address (optional)

City, state, and ZIP code
City, State 12345

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Social security number
1 2 3 4 5 6 7 8 9

or

Employer identification number

**Note:** *If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.*

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here — Signature of U.S. person ▶ _____ Date ▶ May 1, 2003

### Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

**U.S. person.** Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

**Note:** *If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.*

**Foreign person.** If you are a foreign person, use the appropriate Form W-8 (see **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities).

**Nonresident alien who becomes a resident alien.** Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Cat. No. 10231X — Form **W-9** (Rev. 1-2003)

through the execution of a variety of documents. In preparing the funding documents, the attorney should give careful attention to the form of signature that the document requires. If a funding document does not have the proper signature format, it will be returned and will have to be reexecuted, resulting in additional time and effort for the client and the attorney's staff and delay in the funding process. The funding process is expedited when the correct signature format is selected at the outset.

The least secure signature format is the simple signature of the settlor without any form of certification or verification. The next step up from the simple signature is a signature in the presence of a witness. The witness should be the estate planning attorney or staff member who is unrelated to the settlor. A more secure form of signature is a notarized signature. The settlor produces identification and signs the document in the presence of a Notary Public. The Notary Public enters any required information, such as the settlor's identification, signs the document, and affixes a stamp or seal. The form of notarization varies among the states. When preparing a document that requires a notarized signature, the attorney should include the proper notarization language and signature lines. An example of a space prepared for a Notary Public to sign is set forth in Figure 3.5. The estate planning attorney or members of his or her staff should have current Notary Public credentials so that signatures can be notarized when clients sign documents at the attorney's office.

The most secure signature format is the Medallion signature guarantee. A signature guarantee can be obtained at a commercial bank, savings bank, credit union, or broker dealer that participates in a Medallion signature guarantee program. If a signature guarantee is required, the attorney should prepare the document with a space for the guarantor's signature and Medallion stamp. An example of a guarantor's signature space is set forth in Figure 3.6. A document that requires a Medallion signature guarantee should not be signed by the settlor at the attorney's office; the document should be sent with the client to be signed in the presence of the guarantor's representative. Many financial institutions provide a signature guarantee without charge as a customer service; noncustomers who request a signature guarantee should expect to pay a small fee. Although it is inconvenient for a client to have to take the document to a bank or brokerage firm for a signature guarantee, it is an essential step if a guaranteed signature is required.

For some asset transfers, the signature format may be mandated by state law. For example, the applicable state law may require that a deed to real property be signed by the grantor in the presence of a Notary Public and two witnesses. In other cases, the format is dictated by the company to which the transfer or change request is directed. Forms to change a life insurance beneficiary often require the policy owner to sign in the presence of a witness. In contrast, Medallion signature guarantees are required on stock powers and many brokerage forms. If the attorney is unsure about the signature format for a particular funding document, the most direct approach is to check with the company or other party to which the request is directed. If for some reason it is not possible to obtain direction, a notarized signature is a good choice.

## F. FUNDING ERRORS AND OMISSIONS

Errors, delays, and omissions in funding a trust are common scenarios that can jeopardize the purpose for which a trust was created. The consequences of funding mis-

**FIGURE 3.5**

**Notary Public Signature**

STATE OF FLORIDA
COUNTY OF BREVARD

The forgoing instrument was acknowledged before me, this May 1, 2003, by **Cathy Client** ☐ who is personally known to me, or ☐ who has produced identification.
Type of Identification Produced:_____.

_____
NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires:

**FIGURE 3.6**

**Medallion Signature Guarantee**

SIGNATURE GUARANTEE
(Medallion)

_____

takes usually depend on when the problem is discovered. Many mistakes can be corrected if discovered before the settlor becomes incapacitated or dies. After incapacity or death, however, few avenues are available to remedy a funding mistake.

When a third party is asked to retitle an asset in the name of trustees of a trust, there is a potential for errors in transcription or ambiguities arising from excessive abbreviation of the relevant data. Errors in naming the trustees as transferees of the settlor's assets are not uncommon. For that reason, it is important to confirm all requested changes when the client receives the next statement or other document evidencing the change so that any errors can be corrected in a timely fashion.

---

**EXAMPLE: Error in Retitling Asset**

On April 1, 2003, H and W implemented an estate plan with marital deduction and credit shelter provisions. H and W each created a revocable living trust with accompanying pour-over wills and durable powers of attorney. H was the settlor of his trust, and H and W were the co-trustees. W was the settlor of her trust, and W and H were the co-trustees. The couple was advised to divide up their assets between the trusts so that each trust would contain approximately the same value of assets. H and W decided to transfer to W's trust their jointly owned brokerage account having a value of $750,000. When H called their broker's office to request that the account be retitled in the name of W's trust, he was advised that H and W would need to come in to the office to pick up a new account and transfer forms and that their signatures on the forms would need to be guaranteed. H later picked up the forms that had been prepared by the assistant for their signatures. Based on the information that H provided on the phone, the assistant had opened the new trust account in the name of "H and W, co-trustees, U/T/D 4/1/2003." The assistant used the social security number that was on the existing account, which belonged to H. Without reviewing the form, H and W had their signatures guaranteed and submitted it. The ownership designation is ambiguous because there were two trusts executed on April 1, 2003, of which H and W were the co-trustees. When W died in 2004, the applicable exemption amount was $1.5 million. At the time of her death, the value of the brokerage account was $800,000 and the value of the other assets in her trust was $300,000. The brokerage account was listed as an asset on W's federal estate tax return. When the return was audited, the IRS discovered the ambiguity and contended that the brokerage account was owned by H's trust and not by W's trust because H's social security number was on the account. If the IRS prevails, then W's trust will contain only $300,000 and much of the value of the credit shelter planning will be lost.

---

Delays in funding assets into a trust are commonplace, especially when funding is handled primarily by a client. The most prevalent reason for delays in funding seems

to be failure by a client to treat the trust funding as a priority; day-to-day responsibilities and activities leave little time for the detail-oriented process of retitling assets. Other typical causes of delay include lack of complete information about a particular asset, reluctance to incur a transfer fee for a particular asset, and aversion to phone calls and paperwork. Like all forms of procrastination, delays in funding can be harmless or can result in considerably more time and expense than would have incurred in funding the asset in a timely manner.

---

**EXAMPLE: Delay in Funding Asset**

C, a divorced fifty-year-old man in good health, sought estate planning advice in 2003. C's attorney recommended a trust centered estate plan combined with an irrevocable life insurance trust for his children. By using the insurance trust, C could remove the proceeds of his $1 million life insurance policy from his gross estate. The attorney prepared the estate planning documents, which were executed on May 3, 2003. The attorney advised C to transfer ownership of the life insurance policy to the trust and to work with his accountant to file a gift tax return. C was also advised to transfer the remainder of his assets to his revocable living trust. C, who traveled extensively on business, made some progress on funding the revocable trust but did not get around to calling his insurance agent about the life insurance policy. C got an extension to file his 2003 income tax return and met with his accountant to go over the return in August 2004. At that time, C remembered the life insurance trust and asked the accountant what he should do. The accountant advised him to contact the agent and request that the policy be retitled in the name of the trust. Further, C would need to request the gift tax value of the policy so that the accountant could prepare the gift tax return on which C would also allocate part of his generation-skipping tax exemption. The accountant also offered to assist C with the annual *Crummey* letters designed to allow C to use the annual gift tax exemption for premium payments. C, somewhat overwhelmed with all the details, got around to calling the insurance agent in October of 2004. The agent promptly sent C the applicable forms for his signature. C then left on an extended business trip and did not submit the form until April 1, 2005. On January 2, 2008, C died from a heart attack. Excluding the insurance, the value of C's gross estate was $6 million. Because C died within three years of making a gift of the policy to the trust beneficiaries, the $1 million proceeds are included in his gross estate.[24] If the policy had been funded in a timely fashion when the trust was created in May of 2003, the three-year period would have lapsed before C's death and the estate tax savings that he sought to accomplish by using the insurance trust would have been achieved.

---

Although the delay in funding did not seem particularly significant, given C's age and health, it became a catastrophe when C died prematurely. In this context, there are no

postmortem steps that can be taken to rectify the delay. Although the life insurance proceeds will reach C's intended beneficiaries, the amount available for the beneficiaries will be less than the amount that would have been available had the insurance proceeds escaped estate taxation.

No matter how diligently an attorney reiterates the importance of funding all existing assets and all later acquired assets into a revocable living trust, clients may not fully understand the concept involved or may simply forget when new items are purchased. Thus, another common funding mistake is failing to retitle existing assets, or failing to place newly acquired assets, in the name of the trust.

---

**EXAMPLE: Incapacity After Failure to Purchase New Assets in Trust Name**

M, an elderly widow, implemented an estate plan in 1990, using a revocable living trust, a pour-over will, and a durable power of attorney. M named herself as trustee of the trust and her daughter D as successor trustee, personal representative under the will, and attorney-in-fact under the power of attorney. Upon her death, M's trust is to be divided between D and a trust for the benefit of the child of a deceased son. M's estate planning attorney assisted her in funding all of her assets into the revocable living trust. At that time, M owned several certificates of deposit at State Bank, all of which were retitled in the name of the trust. In 2003, M decided to move her CDs in order to obtain a higher interest rate. As each CD matured at State Bank, M withdrew the funds and purchased new CDs over the Internet in an ABC Securities online account. M entered her name individually, rather than her name as trustee of her trust, as purchaser in the online application. M had a stroke and became permanently incapacitated in 2004. To provide for M's custodial care, D will need to use the periodic interest payments from the CDs and eventually to access the funds in the CDs.

---

If M had titled the new CDs in the name of her trust, D would have automatically succeeded M as trustee of the trust. Upon presenting proof of her nomination and authority as successor trustee to ABC Securities, D would have had immediate access to the funds. D's course of action is less certain because of M's failure to maintain her estate plan. D may be able to access the CDs as M's attorney-in-fact under the durable power of attorney. Alternatively, D may be able to use the power of attorney to transfer the CDs into the trust. Both options depend on ABC Securities recognizing D's authority under the power of attorney.[25] Although the power of attorney was executed properly under the law of the state of M's domicile, the power may not satisfy the requirements of the state in which ABC is located and ABC may reject the power of attorney on that basis. Because the power of attorney was executed more than ten years before the need to use it arose, ABC may also object on the ground of staleness. If the power of attorney is ineffective, D may argue that the CDs are part of the trust notwithstanding the title in M's individual name. In some states, when a settlor declares herself trustee, a formal transfer is not necessary if it is clear that the settlor in-

tended the assets to be part of the trust.[26] D would claim that, because M initially transferred the State Bank CDs into her trust and only changed the investments to obtain a higher interest rate, she intended that the replacement CDs be part of the trust as well. To succeed with this strategy, D would have to convince a court of M's true intent and obtain a court order declaring that the CDs are part of the trust. If ABC does not recognize the power of attorney and a court order is not forthcoming, D will be required to have herself appointed guardian of her mother and will have to contend with the additional expenses and annual reporting requirements of a court supervised guardianship for the CDs.

---

**EXAMPLE: Death After Failure to Purchase New Assets in Trust Name**

Assume the same facts as in the prior example, except that M died shortly after becoming incapacitated in 2004.

---

The durable power of attorney does not apply after M's death. D has the same option discussed above of seeking a court order regarding title to the CDs in the trust. Failing that, the CDs will be classified as probate assets because they are not titled in the name of the trust. D will need to offer M's pour-over will for probate and receive letters testamentary appointing her as personal representative in order to transfer the CDs to the trust. Although the assets will end up in the trust available for distribution as M desired, the probate proceeding will involve additional expense that she sought to avoid by using a revocable living trust.

## NOTES

1. Special considerations applicable in naming a trust as beneficiary under a life insurance policy, an annuity, and a qualified retirement plan are discussed at Parts K, L, and M.1, respectively, of Chapter 5.

2. The required elements for identifying a trustee are based on common practice rather than on statutes or case law. A state statute, however, may address certain aspects of a trustee identification. In Florida, for example, a deed of real property to "grantee, trustee" or to "grantee, as trustee" without additional information about the trust is construed as a grant of a fee simple interest to the grantee individually, unless a contrary intention appears in the deed or unless the public records reflect a declaration of trust by the grantee declaring the purposes of the trust and that the property is held other than for the benefit of the grantee. FLA. STAT. § 689.07.

3. When a husband and wife both create revocable living trusts and both are co-trustees of both trusts, it is critical that the trusts do not get accidentally mixed up in the funding process. One approach that helps avoid confusion is to list the settlor of the trust as the first trustee named when assets are retitled. For example, assets funded in to the wife's trust would be identified as "W and H, co-trustees of the W Revocable Trust, dated April 1, 2003," and assets funded in to the husband's trust would be identified as "H and W, co-trustees of the H Revocable Trust, dated April 1, 2003."

4. If the title of the trust includes the date of the trust, it is not necessary to repeat the date.

5. *See* Charles Ian Nash, "Funding," ADMINISTRATION OF TRUSTS IN FLORIDA § 11.2 (3d ed. 2001).

6. Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 125–26 (2001).

7. Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 131–32 (1998); Turner, REVOCABLE TRUSTS § 27:2 (2002)

8. *See* Robert M. Arlen, "Title Problems and Issues," ADMINISTRATION OF TRUSTS IN FLORIDA § 14.6 (3d ed. 2001).

9. If Joe Jones is transferring an existing life insurance policy owned by him to the trust, the policy should be retitled as indicated. Whether the insurance policy is new or previously existing, the beneficiary should be designated using the same identification.

10. Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 126 (2001).

11. Haskell, PREFACE TO THE LAW OF TRUSTS 19–21 (1975).

12. To take into account future mergers and acquisitions, the trust agreement should expressly provide that, if any corporate trustee is merged with or transfers substantially all of its assets to another corporation, or is in any other manner reorganized or reincorporated, the resulting or transferee corporation shall become trustee in place of its corporate predecessor.

13. Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 7 (1998).

14. For a discussion of the strategy of listing assets on the property schedule even if title has not been formally transferred to a trust, see Part D of Chapter 2.

15. *E.g.*, CAL. PROBATE CODE § 18100.5; ORE. LAWS §§ 128.234–128.246; NEV. REV. STAT. §§ 164.400–164.440. For an example of a form certification of trustee designed to comply with the California statute, see TURNER, REVOCABLE TRUSTS § 33:6 and Appendix 109 (1999).

16. ORE. LAWS § 128.236.

17. CALIFORNIA PROBATE CODE § 18100.5(d); ORE. REV. STAT. § 128.238(2).

18. ORE. REV. STAT. § 128.242(2), 128.242(3).

19. CAL. PROBATE CODE § 18100.5(h).

20. I.R.C. § 676(a).

21. I.R.C. § 671.

22. Treas. Reg. § 301.6109-1(a)(2).

23. A trust is taxed in accordance with the rules of subchapter J of the Internal Revenue Code. I.R.C. §§ 641–692. In general, a trust is treated as a conduit with respect to income distributed to beneficiaries; beneficiaries are taxed to the extent income is distributed out to them and the trust is taxed on income retained. This treatment is accomplished by allowing the trust to deduct distributions to beneficiaries in determining its taxable income. §§ 651, 661.

24. I.R.C. § 2035(a).

25. The limitations on using a durable power of attorney to complete trust funding are discussed in Part D.2 of Chapter 1.

26. The necessity for a formal transfer of assets to a trust is discussed in Chapter 2.

CHAPTER 4

# Overview of the Funding Process

## A. GATHER THE NECESSARY INFORMATION AND DOCUMENTS

Estate planning with trusts always involves planning with respect to property. There are various reasons why an estate planning attorney must have complete and accurate information regarding a client's assets. The nature and value of a client's assets may determine the type of trust or trusts that an attorney will recommend for a client's estate plan. The estate plan may not be appropriate if the advice is based on incorrect information about the property subject to the plan. The level of detail that an attorney needs about the client's assets depends on the stage of the planning. In determining whether credit shelter trust planning is required for a married couple, for instance, the attorney needs to know the type of each asset, the form of ownership, and the approximate fair market value. In contrast, more detail is required when it comes time to fund the assets into a living trust. At the planning stage, for example, it is sufficient to know that the clients jointly own real property having a specific approximate value; in order to prepare a deed transferring the property into a living trust, the attorney must review a copy of the recorded deed in order to confirm the exact manner in which title is held and to access the legal description.

The attorney can decide the proper time at which to request the detailed asset information depending on the particular client's situation. A typical scenario would involve a married couple who meet with the estate planning attorney for an initial consultation regarding their estate plan. The attorney may make a preliminary recommendation that involves use of a trust, and the clients may approve of the plan, either at the time of the conference or after reflection. The attorney may prepare draft documents and send them to the clients for review. At that time, it is also appropriate to request the detailed information about their assets that will be required to assist the clients in funding their trust. A general request to a client to provide complete and accurate information about all the property he or she owns is typically too vague to elicit all the information required. A list of the specific information needed is generally more effective. It is also advisable to use the same comprehensive list for each client rather than tailoring the list based on the initial consultation. For example, assume that client has indicated that he owns bank accounts, real property, and an individual retirement account. If he has an opportunity to review a funding checklist that

refers to all kinds of property, the list may jog his memory about a family partnership interest or a beneficial interest in a trust or some other asset that was not originally disclosed to the attorney. A sample checklist to request complete funding information is set forth in Figure 4.1.

It cannot be overemphasized that the time to extract the relevant funding information from the client is prior to the trust execution, a point when the majority of clients are still motivated and engaged. After the trust agreement is executed, no matter how much the funding process has been stressed in prior counseling, most clients seem to feel that the important part has been completed and are resistant to spending substantially more time on the process.

## B. PREPARE FUNDING DOCUMENTS FOR CLIENT EXECUTION

The documents required to transfer a client's assets into a living trust should be prepared in advance of the trust execution and executed immediately after the trust agreement is executed. The document required to transfer title to a particular asset depends on the nature of the asset and the agency, institution, or company involved in the transfer.[1] Funding documents include deeds, account applications, stock powers, assignments, special state or federal government forms, and change of ownership or beneficiary forms. Signatures may have to be witnessed, notarized, or guaranteed.[2]

A considerable amount of advance work may go into the preparation of the funding documents. For example, to prepare a deed of a client's property to a trustee, the preparer must have a copy of the recorded deed to the client, be familiar with the requirements for deeds in the particular state and county, insert any special provisions relating to the trustee and trustee powers, proofread the legal description, prepare any special forms and transmittal letters to send the deed for recording, and request a check to cover the recording fee. In many cases, a special company form is required to effectuate a transfer of ownership or a change of beneficiary. The law firm may wish to keep on file certain forms that are commonly used. If numerous clients tend to use particular banking institutions and investment firms in the local area, it is helpful to maintain a supply of the forms required by those companies. If a particular form is needed, then the attorney needs to request the form from the company or its website. The attorney should allow time to obtain the form and prepare it before the trust is executed.

It seems hard to fathom that some companies will balk at providing a blank account application or change of beneficiary form at the request of a law firm on behalf of an estate planning client. But such a refusal occurs with sufficient frequency that it should be mentioned here. When this occurs, it is usually more efficient and less aggravating to ask the client to contact the company rather than to protest the issue with the company representative's supervisors. The least time consuming method is for the client to request that the form be sent directly to the attorney; otherwise, the client will receive the form and deliver or mail it to the attorney.

There are two basic categories of funding documents that the attorney prepares to accomplish asset transfers to a trust. The first category comprises deeds, assignments, and other documents that are prepared by the attorney. Most of these documents are generated from basic forms and are then tailored to individual clients. For

FIGURE 4.1

**Sample Checklist to Request Asset Information**

PLEASE PROVIDE COPIES OF THE FOLLOWING DOCUMENTS (UNLESS ORIGINALS ARE REQUESTED):

1. Recorded deeds for real property (including condominiums and time shares) owned by you, wherever located;
2. Recorded mortgages encumbering real property that is owned by you;
3. Statements for each of your accounts, including checking, savings, money market, credit union, certificates of deposit, safe deposit box, investment, mutual funds, dividend reinvestments;
4. Original savings bonds or T-Bills;
5. Recorded or unrecorded mortgages, notes, and financing statements that you own or are held by you;
6. Shareholder agreements, original stock certificates, and corporate books for closely held businesses and professional associations;
7. Partnership agreements to which you are a party;
8. Operating agreements for limited liability companies of which you are a member;
9. Complete list of assets for any sole proprietorships owned by you;
10. Certificates for other stock held by you;
11. Contracts for college tuition and savings programs;
12. Membership certificates with assignable value;
13. Trust agreements for trusts in which you have a beneficial interest;
14. Contracts or deeds to burial plots or spaces;
15. Life insurance policies and any other policies with a death benefit;
16. Contracts and most recent statements for annuities;
17. Statements and information for pension plans, IRAs, Keoghs, annuities, etc.; and
18. Registrations for automobiles, mobile homes, motor homes, boats, airplanes, and other personal property for which you have evidence of title.

example, the attorney will have a form deed of real property to a trustee that contains all the special language that the attorney deems advisable for a conveyance to a trustee under the particular state law. The form deed also contains blanks or codes for the names of the grantor-settlor, grantee-trustee, and legal description. After copying the form deed to the client's computer file, the preparer will fill in the particulars, save the completed document, and generate the customized deed.

Preprinted forms supplied by companies, banking institutions, state agencies, the Internal Revenue Service, state taxing authorities, and others make up the other category of funding documents. Preprinted forms contain blanks that must be completed by typing or writing in the required information. Formerly, the standard practice of law firms was to complete all forms on a typewriter. As computers have proliferated, however, the use and availability of typewriters has waned. While some attorneys may continue to feel that typing forms is more professional, the standard practice in the funding area has gravitated toward handwritten completion of the blanks. If a form is not typed, however, it is an absolute necessity that the preparer's handwriting be clear and legible. Many companies are now making forms available on their websites, and some offer the additional feature of online completion. For example, many Internal Revenue Service forms can be retrieved and completed online and then printed out.[3] Unfortunately, forms completed online cannot usually be saved either on the website or to a disk.

A practical issue frequently confronted when completing change of ownership or beneficiary forms is that the lines provided on the forms do not provide sufficient space to fill in all the language required to identify a trustee and trust. For example, a form may have a 3-inch line designed to contain the name of an individual owner, but a 6-inch line is needed to write or type in the names of the trustee and trust as owner. Even more space is required when the trust has more than one co-trustee. The solution is to improvise, either by using acceptable abbreviations or by using blank space on the form to complete the required information. Another common situation is presented by forms that provide a single signature line. If there are co-trustees, it is necessary to find space and prepare lines for all the co-trustees to sign.

Numerous examples of completed funding documents appear throughout this book. The stock power of attorney, set forth in Figure 5.28, is an example of a funding document generated from a form and customized for a particular client. Form PD F 1851, titled "Request to Reissue United States Savings Bonds to a Personal Trust," set forth in Figure 5.20, is an example of a preprinted form with the required information handwritten in the blanks. Form SS-4, "Application for Employer Identification Number," set forth in Figure 3.3, is an example of a form completed online and printed out. The "Account Owner Change" form, set forth in Figure 5.46, illustrates how to complete a form that has insufficient space and lines for the required information and signatures.

## C. INITIATE CHANGES OF OWNERSHIP AND BENEFICIARIES

If the estate planning attorney has obtained all relevant information concerning a client's assets and has prepared the applicable funding documents for execution immediately after the execution of the trust agreement and other estate planning docu-

ments, the trust funding process can begin immediately following the execution of the estate planning and funding documents. The funding documents should be divided between the attorney and client on the basis of the next action to be taken. For example, the client will be instructed to take a letter of instruction to the bank to retitle checking and savings accounts. The client will take the signed letter of instruction with him or her after the trust execution. Similarly, some funding documents require a Medallion signature guarantee that cannot be performed at the attorney's office. Those documents are given to the client to take to a qualified institution for signing in the presence of the guarantor. The funding documents that the attorney will transmit to third parties by mail should be sent out as soon as possible. For example, executed deeds are sent to the county for recording in the public records and change of ownership and change of beneficiary forms are sent to the appropriate companies.

It is a good idea to contact the client soon after the execution of the estate planning and funding documents to reinforce the necessity of funding the trust properly and to emphasize the client's responsibilities in this regard. A sample letter to the trust client regarding the funding process is set forth in Figure 4.2.

## D. MONITOR THE PROGRESS

The estate planning attorney should monitor the progress of the trust funding and take any steps necessary to expedite the matter. For example, it may be inconvenient for the client to look up all the information that the attorney requests to prepare certain funding documents. The attorney needs to remind the client about the need to furnish the information. A sample letter to the client regarding outstanding funding issues is set forth in Figure 4.3. Similarly, if a request has been made to a third party to retitle an asset, and the third party has not responded to the attorney or the client, it is necessary to follow up with the third party to ascertain the cause of the delay.

The duration of the funding process depends in part on the number and type of assets to be funded into the trust as well as the cooperation and ability of the companies and other agents who effectuate the changes of ownership and beneficiaries. The client's cooperation is also critical to expediting or extending the process. Some clients will take on the funding process as something of a quasi-military mission. These clients may take letters of instruction to their banks on the same day as the trust is executed and return the next day with copies of the new signature cards. At the other extreme are clients who are too busy, preoccupied with matters of greater priority to them, or simply lazy or uncooperative. Most clients fall somewhere in between the two extremes—willing to cooperate but requiring reminders to keep the process moving.

It should also be noted that the schedules and diligence of the estate planning attorney and his or her staff may also affect the progress of the funding. Several factors come into play that may result in delay. If an attorney has a thriving estate planning practice and staff members are already fully occupied or working overtime, trust funding may be one of the first areas to get put aside or overlooked. Because there is usually no official deadline for transferring a client's assets to a trust, the pressure of meeting with new clients, preparing estate planning documents for clients to sign, and preparing estate tax returns may cause funding matters to lose priority. A possible

**FIGURE 4.2**

**Letter to Client at Commencement of Funding**

Ms. Cathy Client
123 Flamingo Drive
City, State 12345

RE: Trust Funding

Dear Cathy:

Now that your revocable living trust has been executed, you should transfer to your trust all your assets subject to probate. The required steps include, but are not limited to, assigning your personal assets to your trust by deed of gift, transferring your real property by deed, requesting your banks to retitle your accounts in your name as trustee, and notifying your financial advisor or stock broker to transfer your stock and other assets in your account to your trust. Also, you need to make proper beneficiary designations for your life insurance policies, annuities, and individual retirement accounts or pension accounts. (There are important tax considerations that you should discuss with us prior to doing this.)

We cannot overemphasize the importance of funding your trust. The main purposes of your trust are to protect against your potential disability and to avoid probate of the trust assets at your death. Both of these objectives will be frustrated if the trust is not funded. Thus, it is imperative that we combine our efforts to ensure that your trust is funded in a timely fashion. As we discussed previously, while there is much that we can do to assist you with the trust funding, certain steps can only be taken by you, as the owner of your property.

We have gotten off to an excellent start on the funding of your trust. When you signed your trust and other estate planning documents, we also had prepared for your signature most of the deeds, assignments, letters of instruction, forms, and other transfer documents required to transfer ownership of your property to your trust. We have already sent the deeds for recording and have transmitted most of the other documents that you signed. At our meeting, you took with you several forms, such as letters of instruction to retitle your bank accounts and the Brokerage Company form for a Medallion signature guarantee. Please do not hesitate to call if you have any questions about these or any other actions that you need to take.

It is our privilege to assist you with your estate planning. We look forward to working with you on the funding of your trust.

Yours very truly,

Ann Attorney

**FIGURE 4.3**

**Letter to Client Regarding Outstanding Funding Issues**

Ms. Cathy Client
123 Flamingo Drive
City, State 12345

RE: Trust Funding

Dear Cathy:

It has been almost three months since you executed your revocable living trust and other estate planning documents on May 1, 2003. In connection with the funding of your revocable trust, the following issues are still outstanding and need your attention:

1. Out of State Checking Account—You advised us that you maintain a checking account at City X, State Y, where your summer home is located. If you will furnish us with a copy of a recent statement for this account, we will contact the bank to find out what steps are required to retitle this account in the name of your trust.

2. Closely Held Corporation—It is important that the 100 outstanding shares of your S corporation be retitled in the name of your trust. If you will bring in the outstanding stock certificate and the corporate book, we can prepare the necessary documentation to effectuate the transfer.

3. Real Estate Partnership—You advised us that you own a 25% interest in a general partnership but that you could not find your copy of the partnership agreement. You recommended that we contact Pete Peters, another partner in the partnership, at 345-6789, to request a copy of the partnership agreement. We have attempted to contact Mr. Peters on several occasions, but he has not returned our telephone calls. Please attempt to locate your copy of the agreement or contact another of the general partners to request a copy. We need to review the partnership agreement to find out whether you can transfer your partnership interest to your trust and, if so, whether the consent of the other partners is required. Once we review the partnership agreement, we will prepare an assignment of the partnership interest and, if necessary, consent forms for execution by the other partners.

Please call us if you have any questions regarding the above. It is very important to complete the funding of your trust and we will be glad to help you in any way we can. It is a pleasure to be of assistance.

Sincerely,

Ann Attorney

psychological factor pertains to the receipt of fees. Clients commonly pay a flat fee for an estate planning matter at the time they sign their estate planning documents. Having received the fee, the attorney may wish to leave trust funding in the hands of assistants while he or she moves on to new matters. If, however, the attorney is unwilling to answer questions of staff members or take other necessary steps, the staff member will not know how to proceed and the matter will languish. There are also elements of tedium and frustration associated with trust funding. Even the interest generated by a previously unencountered funding issue may wane rapidly as countless phone messages are exchanged, conflicting answers are received, and clients fail to return phone calls. When faced with some of these obstacles to completing a client's funding, it may be helpful to recall that there is a potential deadline for every trust client—the day that he or she becomes incapacitated or dies. The attorney can avoid possible disaster by completing the funding of trusts in a timely fashion.

## E. TERMINATE THE FUNDING PROCESS

When all or most of a trust client's assets have been transferred to the trust, it is time to wrap up the funding and conclude the estate planning matter. A good approach is to send the client a draft copy of the property schedule listing all of the assets that were to be transferred to the trust and noting the status of each asset. Request the client to review the draft schedule and advise the attorney whether the draft schedule is accurate and complete or whether any changes are required.[4] If any asset transfers are outstanding due to the client's failure to take some required action, a letter to him or her such as that set forth in Figure 4.4 should prompt completion of the required steps. After hearing from the client regarding any revisions to the property schedule, the attorney can finalize the property schedule, attach it to the original trust agreement, and deliver all the original estate planning documents to the client. A sample letter to the client transmitting the original estate planning documents is set forth in Figure 4.5.

Occasionally a client's participation in the funding process may be so minimal that the attorney cannot complete the process. Rather than maintaining an open file with the trust funding partially completed, the attorney should make one last effort to emphasize the importance of the trust funding to the overall estate plan and advise the client that, absent his or her timely cooperation, the file will be closed with assets unfunded. The attorney may request a meeting with the client personally to request the client's cooperation in getting the funding back on track. Another alternative is to write a letter listing all the remaining actions that the client needs to take in order to complete the trust funding and warning the client that, if he or she does not respond by a specified date, the attorney will assume that the client does not wish to retitle the remaining assets. If the client does not respond by the specified date, the attorney should send the original estate planning documents to the client along with an appropriate cover letter.

## F. ADVICE TO CLIENT CONCERNING SPECIFIC FUNDING ISSUES

The estate planning attorney should give some thought to whether and how to memorialize his or her advice to the trust client on the various issues that arise during

**FIGURE 4.4**

**Letter to Client with Draft Property Schedule**

Ms. Cathy Client
123 Flamingo Drive
City, State 12345

RE: Estate Planning

Dear Cathy:

In connection with your estate planning you executed a revocable inter vivos trust, will, and collateral documents on May 1, 2003. Since then, we have been working together to complete the funding of the trust.

Please examine the draft property schedule carefully as soon as possible. If an item has a small letter "c" by the item number, the change of ownership or beneficiary designation for that item has been completed and confirmed. Any item without a small letter "c" requires additional information or confirmation as indicated in our notes. If you have acquired any assets subsequent to the execution of the trust, please list these assets and state whether such assets are titled in the name of your trust. Any assets that you have disposed of should be deleted. You may indicate any changes or additions directly on the schedule and return it to us in the enclosed self-addressed envelope.

After we have heard from you to verify that the property schedule is correct, or to indicate any changes or additions, we will finalize the property schedule and attach it to your trust. At that time, we will send you the original documents and binder containing copies of all your estate planning documents for easy reference.

It is our pleasure to assist you with your estate planning. Please let us know if you have any questions.

Yours very truly,

Ann Attorney

FIGURE 4.5

**Letter to Client upon Completion of Funding**

Ms. Cathy Client
123 Flamingo Drive
City, State 12345

RE: Estate Planning

Dear Cathy:

Enclosed are the original estate planning documents that you executed on May 1, 2003. We recommend that you store the original documents in a safe deposit box or fireproof safe. Also enclosed for your records is a binder containing copies of all the documents.

Any additional assets you acquire should be titled in the name of the trust. Proper beneficiary designations will need to be made on new life insurance policies, annuities, pension plans, or individual retirement accounts. When assets are purchased or sold, the changes should be noted on the property schedule to keep your records current. If you are unsure about the funding of a new asset, please call and we will be happy to advise you.

It was our pleasure to assist you with your estate planning. Please let us know if we can help you in the future with this or any other legal matter.

Yours very truly,

Ann Attorney

the funding of a trust. In some instances, whether to transfer a particular asset to a trust involves a consideration of the advantages and disadvantages of transferring the asset to the trust or omitting to transfer the asset. For example, homestead creditor protection may be forfeited if homestead property is transferred to a trust, even if the property owner is the trustee and beneficiary of the trust. The estate planning attorney should advise the client of the potential risk and offer him or her some guidance for proceeding, such as the attorney's opinion or inclination on the issue or an indication of what a majority of clients opts to do. But each client with a revocable living trust needs to weigh the desirability of preserving the creditor protection against the disadvantage of leaving the property unfunded in the event he or she becomes incapacitated or dies.

Suppose a client with no debts or likelihood of future debts elects, after being advised of the issues involved, to fund homestead property into a revocable living trust. Years later, the client is sued and a substantial judgment is entered against him. By that time, it has become established case law that creditor protection of homestead property does not extend to property held in trust. The client, having forgotten his discussion with the estate planning attorney when the trust was created, is shocked to learn that the judgment creditor can take his home in satisfaction of the judgment The client begins to wonder what recourse he has against the estate planning attorney for placing his homestead property into the trust. If sued for malpractice, how does the estate planning attorney prove that she advised the client of the risk of losing the homestead creditor protection and that, after considering the pros and cons, the client made an informed decision to place the property in trust?

There are various techniques, ranging from informal to formal, for memorializing an attorney's advice to a client. The most informal approach is a reference in the attorney's handwritten notes of a conference or telephone conversation. The notes may provide, "Discussed H/S issue; client: go ahead with funding." A memorandum to the file written or dictated by the attorney following the conference is another common method for preserving the fact that advice was given. Stepping up in formality, an attorney may send a letter to the client that summarizes the advice that was given and the client's decision. The assumption is that, if the client did not receive the advice described in the letter, the client would challenge the statements made and the issue could be resolved contemporaneously. The attorney may wish to send the letter by certified mail (with or without return receipt requested) and retain the certified slip in the file. An even more rigorous approach is to request the client to sign the letter in a space provided at the bottom to acknowledge the receipt and understanding of the advice and the resulting decision.

The attorney must exercise discretion in determining whether, how, and when to preserve evidence of advice to clients on specific issues. It would be inappropriate to request the client to acknowledge every piece of advice given during an estate planning matter; moreover, it would appear that the attorney is more concerned with protecting himself or herself than representing the client. On the other hand, if an issue is particularly important and the consequences of a decision could be severe, it is entirely proper to request a client acknowledgment. As to the timing of the memorialization, the two choices in funding are the point the issue arises and is discussed and

**FIGURE 4.6**

**Letter to Client**
**Regarding Changes in Investments**

Ms. Cindy Client
STREET
CITY, STATE ZIP

RE: Estate Planning

Dear Cindy:

Thank you for your note, dated _____.

It is not necessary for you to update us on routine changes in your investments. It is important, however, for you to make sure that any new assets are properly titled and that proper beneficiary designations are made on any new life insurance or annuities. Of course, should there be any significant changes in your affairs, we recommend that you consult with us concerning the impact on your estate plan; and we recommend a general review every five years or so.

Based on the information you provided us, your new account with Brokerage Firm is properly titled in the name of the trust. For your new annuity, the primary beneficiary should be *"the acting trustee of the Cindy Client Trust Dated September 10, 2001,"* and no contingent or secondary beneficiary should be designated. To keep your records current, we recommend that you make notations on your Property Schedule (attached to the back of your trust agreement) to reflect any changes, such as new assets, assets that have been sold, or new account numbers.

It is a pleasure to hear from you. Please let us know if you have any questions.

Yours very truly,

Ann Attorney

the point of completion of the matter. Either time is acceptable so long as the attorney follows a consistent approach and does not either omit a needed memorialization or duplicate the issue with the same client.

## G. ASSETS SUBSEQUENTLY ACQUIRED OR SOLD

Estate planning clients need to be counseled concerning changes in the property transferred to a trust following the initial trust execution and funding. Regarding the subsequent acquisition of additional assets, the client should be aware that new assets should be titled in the name of the trust from the outset of ownership. For example, if a new bank account is opened, the application should be made in the name of the trustee of the trust rather than in the client's name individually. If real estate is purchased, the sales contract should be prepared in the name of the trustees and the deed should designate the trustee as grantee, unless financing considerations require individual ownership at the outset. The client may be furnished with the proper wording for titling new assets at the time the trust is executed. As a practical matter, many clients will simply call the estate planning attorney or his or her assistant to request the proper wording at the time of the subsequent purchase.

The client should also be counseled to maintain the trust property schedule so that it accurately reflects the assets owned by the trust at any point in time. Not only is it very convenient for the client to have a list of the trust property, but it is also extremely useful when a successor trustee assumes trusteeship upon the incapacity or death of the client. Typically, the original trust document with attached property schedule is kept in a safe-deposit box for security. The client keeps a copy of the trust at home or office for reference. All changes can be made on the copy of the property schedule. For example, if a parcel of real property listed on the schedule is sold, the client can cross it off and indicate the date of the sale on the copy of the schedule. If the client changes investment advisers, the old brokerage account can be crossed off and all the relevant information inserted at the bottom of a page.

Occasionally a trust client will call or write the estate planning attorney to advise the attorney of changes in investments. The client can be instructed that it is not necessary to advise the attorney concerning routine changes in investments or other assets. A sample letter to a client regarding routine changes in investments is set forth in Figure 4.6.

## NOTES

1. The mechanics of transferring specific assets into trusts are discussed in Chapter 5.
2. The signature formats are described in Part E of Chapter 3.
3. *See* www.irs.gov/formspubs/index.html.
4. Clients typically respond by either calling the attorney's office to indicate any changes or noting the changes on the draft property schedule and returning the edited schedule to the attorney by mail. The attorney may consider, either as a general rule or for particular clients, requiring the client to approve the draft schedule or to make any changes in a signed writing.

CHAPTER 5

# Funding Trusts with Specific Assets by Transfer of Ownership or Beneficiary Designation

The estate planning attorney encounters a seemingly endless array of assets owned by clients seeking to establish inter vivos trusts. The Third Restatement of Trusts states the basic principle that a trustee may hold in trust any interest in any type of property.[1] Thus, restrictions or conditions on the transferability of property to trusts arise not from any policy of trust law, but from other sources, such as applicable state or federal laws, the governing instruments of business entities, and the terms of private instruments.[2] This chapter examines the practical transfer of specific assets commonly sought to be transferred by settlors to inter vivos trusts.

## A. REAL PROPERTY

Ownership of real property is normally evidenced by a deed that contains the name of the owner and a legal description of the property and conforms to the state requirements for recorded deeds. The typical trust document authorizes the trustee to purchase, sell, retain, repair, improve, subdivide, mortgage, and otherwise deal with real property. To transfer title to real property to a trust, the settlor as grantor executes and records a deed naming the trustee of the trust as grantee.[3] Special considerations are present when the property is located in a state other than the settlor's state of domicile, when the property is subject to a mortgage, and when the property is subject to homestead or other restrictions making a transfer impossible or inadvisable.

### 1. Real Property Located in State of Domicile

#### *a. Type of Deed*

An important threshold issue to consider is whether to use a quitclaim deed or a warranty deed to transfer title to real property to a trust. A quitclaim deed passes to the

grantee any interest the settlor has in the property but does not contain warranties respecting the validity or status of the title. In a warranty deed, the grantor promises to warrant and defend the grantee's title and possession in the estate granted.[4]

While a quitclaim deed is sufficient to pass a settlor's interest in real property to a trustee, two important considerations weigh in favor of using a warranty deed.[5] First, a warranty deed preserves the integrity of the chain of title[6] and will not raise questions concerning title when the property is ultimately distributed or sold by the trustee. Second, depending on the type of title insurance policy used, the recipient of a quitclaim deed may forfeit recourse to the settlor's title insurance policy or prior policies.[7] For example, the American Land Title Association Owner's Policy defines the "insured" as the named insured under the policy and those who succeed to the interest of the insured by operation of law, such as heirs, distributees, and personal representatives.[8] The trustee of a living trust does not receive title from the settlor by operation of law and thus is not considered an insured under the settlor's policy. The policy coverage continues in force following conveyance of title only so long as the insured has liability by reason of covenants of warranty made by the insured in any transfer or conveyance.[9] When a settlor conveys property to a trust using a quitclaim deed, there is no warranty made by the settlor-insured that would continue the coverage under the policy.

### *b. Conveyancing Requirements*

The client should furnish the estate planning attorney with a copy of the recorded deed to a residence or any other real property owned in the state of domicile. If the client does not have a copy of the recorded deed, the attorney can obtain one using the services of a title company or from county official or Internet records. The recorded deed shows the settlor's ownership interest in the property, whether the property may be subject to a mortgage or any other pertinent restrictions, and the legal description of the property.

When preparing a deed to transfer title to real property to a trustee, the attorney should comply with the state and county general requirements for deeds and for the recording of deeds.[10] Compliance with any state law provisions pertaining specifically to the transfer of real property to trusts is also essential.[11] Traditionally, it was common for an attorney to practice the fields of both estate planning and real estate. Due to increasing specialization within the practice of law, today estate planning specialists often are not necessarily authorities in the real estate field. All estate planning attorneys should be familiar with the basic real property conveyancing laws and should be able to prepare routine deeds to transfer property to trusts. The non-real estate expert should seek the assistance of a real estate attorney with respect to complex or unusual conveyancing issues.

The potential adverse consequences of failing to observe the requirements for the transfer of real property to a trust are illustrated by *Estate of Wittmond*, an Illinois case.[12] In 1984, Carl executed a will under which he devised a farm to his longtime companion Jane Stewart. Carl's nephew and attorney, Charles Burch, was residuary beneficiary and personal representative under the will. In 1992, Carl created a land trust into which he transferred various parcels of real estate. A corporate fiduciary was

named trustee of the land trust and Charles was the residuary beneficiary. In 1996, Carl executed a deed, prepared by Charles, conveying the farm to the trustee of the land trust. At Carl's direction, Charles did not record the deed and retained it in his custody. When Carl died, Jane claimed the farm property under the terms of the 1984 will, but Charles contended that the farm property was not part of the estate because Carl conveyed it to the land trust during his lifetime. After the dispute over the farm property arose, Charles recorded the deed. The court held that the farm was part of the estate and subject to the devise to Jane.[13] The deed was ineffective to transfer the property to the land trust because it was not delivered to the trustee.[14]

An interesting set of facts is described in *DuPont v. Southern Natn'l Bank*,[15] which involved an attempt by a settlor to avoid all or part of an irrevocable trust that he created in 1972 and initially funded with corporate securities. The trustees of the trust were the settlor's attorney and a corporate fiduciary. In 1973 the settlor executed three deeds conveying South Carolina real property to the trustees. The deeds were held by the attorney for several years but not formally delivered to the trustees, apparently because the settlor's wife did not renounce her dower rights in the property. The settlor continued to pay property taxes on the property following execution of the deeds. After the settlor and his wife divorced in 1978, the settlor sought to avoid the trust. In response, the trustees in 1979 requested the settlor to execute a consolidated deed to the South Carolina property. The settlor refused to sign a consolidated deed and renounced the earlier three deeds. The trustees then recorded the three deeds without the knowledge of the settlor. A federal district court determined that the transfer of the realty to the trust was not valid. The Court of Appeals for the Fifth Circuit vacated and remanded the trial court's decision on the ground that the trial court improperly denied the trustees an opportunity to present evidence on the validity of the transfer.

The properly executed deed to a trustee should generally be recorded, and the original recorded instrument should be delivered to the trustee for safekeeping.[16] Although a small fee will be required to record the deed, documentary stamps or other real estate transfer taxes are generally not payable. Some attorneys advise against recording a deed from a settlor to a revocable living trust, either as a general rule or in specific contexts. For example, if a lender refuses to consent to a transfer of encumbered property to a revocable living trust, an attorney may advise the settlor to record the executed deed to the trust only after the mortgage is satisfied. Another argument against recording a deed to a revocable trust relates to facilitating a sale of the property by the settlor. If the settlor sells the property, the unrecorded deed can be destroyed; the deed can be recorded if the property is not sold and the settlor becomes incapacitated or dies.

### *c. Drafting Considerations*

The future sale, transfer, or other disposition of the property by the trustee should be considered when preparing a deed to a trustee. Third parties dealing with the trustee will know from the face of the deed that the trustee is acting in a fiduciary capacity. They will need to know whether the trustee named in the deed is still serving as trustee and whether the trustee has the power under the terms of the trust to enter into the proposed transaction. To facilitate such inquiries, some attorneys include

language in the deed that identifies the successor trustees named in the trust agreement. The powers of the trustee to sell or otherwise dispose of real property can also be stated in the deed. If the information in the deed satisfies the third party, then it will only be necessary to verify to the third party that the trust is still in effect and that trustee is still acting in the capacity of trustee at the time of the transaction, which can be done by affidavit. If the powers of the trustee are not set forth in the deed, or if the third party insists on further proof of the trustee's authority, additional steps are required. Common practices include recording the entire trust agreement, recording the relevant pages of the trust agreement, or recording an affidavit setting forth the relevant language from the trust agreement. Because clients overwhelmingly desire to maintain privacy concerning the terms of their trusts, every effort should be made to keep the dispositive provisions of the trust out of the public records.[17]

A state statute may address the statement of trustee powers in a deed to a trustee. For example, in Florida, a deed may contain language conferring on the trustee the power to protect, conserve, seel lease, encumber, or otherwise manage and dispose of the real property described in the deed. When a deed to a trustee contains the specified language, a grantee of the trustee is not required to inquire into the trustee's authority to engage in the transaction and is protected from claims of beneficiaries or their heirs and assignees.[18]

Clients who transfer real property to a living trust typically do not wish to purchase a new title policy naming the trust as insured because of the additional premium expense involved. Should a title problem later arise, the client may regret his or her failure to purchase a new title insurance policy if the limits of the existing policy are significantly less that the present value of the property. The estate planning attorney may wish to advise the client of the option of updating the title insurance and confirm the discussion in writing to the client. The attorney may wish expressly to specify in the deed that neither the attorney nor the attorney's law firm is issuing an opinion regarding the title to the property.

#### *d. Postfunding Mortgages*

Lending institutions may be unwilling to make a mortgage loan when real property is owned by a revocable living trust. If real property has been funded into a revocable living trust and the settlor wishes to mortgage the property, the standard technique is for the trustee to convey the property by deed to the settlor/beneficiary temporarily while the mortgage loan is processed and completed.[19] After the closing, the settlor can reconvey the real property to the trust by deed.

### 2. Real Property Located in Other States

The client should furnish the estate planning attorney with a copy of the recorded deed to any real property owned outside the state of domicile. When a client owns real property located in another state, the attorney should have the deed conveying the property to the trust prepared or reviewed by an attorney licensed to practice law in the state in which the property is located. There are two reasons for involving an attorney in the other state. First, the preparation of a deed and accompanying advice to

the client may constitute the unauthorized practice of law in the state in which the property is located. The practice of law is defined by state law, and the scope of the practice of law varies among the states.[20] The preparation of documents and the giving of legal advice and consultation on matters pertaining to real estate have been held to constitute the practice of law.[21] The second reason for having the deed prepared by an attorney in the other state is that the estate planning attorney may be unfamiliar with specific rules regarding the transfer of real property in the other state with the result that the deed may be legally deficient.

There are two ways to handle the preparation of the deed transferring property located in another state to the trust. The first way is to contact an attorney in the other state who is knowledgeable about real estate matters and request the preparation of a deed to effectuate the transfer of the property to the trust. If the estate planning attorney and the client are unfamiliar with any attorneys in the other state, an attorney can be located through recommendations by other attorneys or by using a legal directory. An initial contact with the out-of-state attorney by telephone or e-mail is advisable to make sure the foreign attorney understands the transaction and ascertain the fee and recording expenses. The estate planning attorney should advise the client of the fees and request the client's consent to proceed. At this point, the estate planning attorney will furnish the other attorney with all the relevant information, including a copy of the recorded deed and a designation of how the property should be retitled. A sample letter requesting preparation of a deed is set forth in Figure 5.1. The out-of-state attorney will prepare the deed and return it to the estate planning attorney for execution. Then the estate planning attorney will return the executed deed to the out-of-state attorney, who will have it recorded and returned to the estate planning attorney. A sample letter transmitting the executed deed is set forth in Figure 5.2.

Some estate planning attorneys prefer to prepare a deed and send it to an out-of-state attorney to review for conformity with the requirements of the other jurisdiction. The attorneys who use this approach believe that the attorney's fee for reviewing a deed may be less than the fee for preparing a deed. In practice, however, most attorneys would prefer to prepare a deed than to review a deed, and the fees for preparing and reviewing deed are basically the same.

A client may resist the involvement of another attorney in the funding process of the out-of-state realty. A client may even seek to convince the estate planning attorney to prepare the deed in order to avoid another legal fee or because the client is unfamiliar with the out-of-state attorney. A client may also decide not to transfer the out-of-state real property because of the additional cost. The estate planning attorney should firmly counter any such resistance and strongly advise the client against leaving the out-of-state property out of the trust. If the client dies owning property in another state, an ancillary probate will generally be required; moreover, even if all the client's other assets were transferred to the trust, eliminating the necessity for a probate in the state of domicile, a probate may nevertheless be required in order to appoint a personal representative to initiate the probate in the foreign jurisdiction.[22] Thus, by taking a few simple extra steps when a trust is created, more complicated and costly additional steps upon the client's death can be avoided.

While arranging for funding into trusts of out-of-state property is relatively straightforward, attempting to retitle property located in another country is prob-

FIGURE 5.1

**Letter Requesting Preparation of Deed to Trustee**

Jane Roberts, Esquire
123 Main Street
City, Foreign State 12345

BY FACSIMILE TRANSMISSION

RE: Joe Doe and Mary Doe Estate Planning

Dear Ms. Roberts:

Pursuant to our telephone discussion yesterday, transmitted herewith as an enclosure is a copy of the recorded deed to property owned by Joe Doe and Mary Doe and located in First County, Foreign State. As part of their estate planning, Mr. and Mrs. Doe have created a revocable living trust into which they will transfer their assets. We would appreciate it if you would prepare a deed to retitle the property in the names of *"Joe Doe and Mary Doe, Co-Trustees, of the Doe Family Trust Dated May 3, 2003."* If you will send the deed to us, we will supervise the execution of the deed and return it to you for recording.

This will confirm that the fee for your services in connection with the preparation and recording of the deed will be $____, and that you will send your statement for these services directly to Mr. and Mrs. Doe at their State address.

Please let us know if you need additional information or have any questions. We very much appreciate your help in this matter.

Yours very truly,

Ann Attorney

Enclosure

cc: Mr. and Mrs. Joe Doe (by U.S. Mail without enclosure)

## FIGURE 5.2

### Letter Transmitting Signed Deed

Jane Roberts, Esquire
123 Main Street
City, Foreign State 12345

Re: Joe Doe and Mary Doe Estate Planning

Dear Ms. Roberts:

Enclosed is the original deed executed today by Mr. and Mrs. Doe. Please have the deed recorded as required by Foreign State law. Unless we hear otherwise from you, we will assume that the conveyance is effective on the date of signing, notwithstanding that the deed will be recorded at a later date. If you will return the original recorded deed to us, we will give it to the Does with all their other original estate planning documents.

As we discussed, please send the statement for the fee for your services to Mr. and Mrs. Doe at their State address.

We very much appreciate your assistance in this matter.

Yours very truly,

Ann Attorney

Enclosures

cc: Mr. & Mrs. Joe Doe (without enclosures)

lematic. Considerations include whether the client travels to the location, whether the client has family members or an attorney there, whether the country recognizes property ownership by a trustee or trust, the complexity of retitling property in the country, laws that may restrict the transfer of property outside the family, and the degree of political stability or unrest there.

## 3. Property Subject to Mortgage

Before transferring real property to a trust, an attorney should ascertain whether the property is subject to a mortgage or other encumbrance. The client should supply a copy of the recorded mortgage for the attorney to examine. The information contained on the recorded mortgage is needed for a couple of purposes. In all cases, the deed of the encumbered property to the trust should be made subject to the mortgage. In addition, the attorney should ascertain whether the mortgage contains provisions, such as a due-on-sale clause, that would be triggered by a transfer of the property. Both issues are discussed below.

### *a. Transfer of Property Subject to Mortgage*

If property is mortgaged, the deed transferring the property to the trust should expressly state that the transfer is subject to the mortgage. The mortgage should be particularly identified by references to the original lender and the book and page or other references of the public records where the mortgage was recorded. If the attorney is aware that the mortgage has been assigned, the words "as assigned" may be appended as well.[23]

The attorney should consider whether to notify the lender that the mortgage property was transferred to the trust. A sample letter for this purpose is set forth in Figure 5.3. Because the settlor remains personally liable on the mortgage notwithstanding the transfer to the trust, the attorney may decide that such notification is an unnecessary step.

### *b. Due-on-Sale Clauses*

A due-on-sale clause authorizes a lender to declare due and payable sums secured by a mortgage if all or part of the property securing the loan is sold or otherwise transferred without the lender's consent.[24] The typical due-on-sale provision is broadly drafted to apply in the event of any voluntary or involuntary sale, transfer, assignment, or other conveyance of a legal or equitable interest in the mortgaged property. Thus a transfer of property by the owner to the owner's revocable living trust is a transaction that is covered by the literal language of the common due-on-sale clause. If the mortgage has a due-on-sale provision, the steps required before transferring the real estate to a trust depend on whether the property is covered by the federal preemption statute.

The Garn-St. Germain Depository Institutions Act of 1982 preempts lenders from enforcing due-on-sale restrictions in the case of certain exempt transfers. The protection applies in the case of a real property loan secured by a lien on residential

## FIGURE 5.3

## Letter Notifying Lender of Transfer

[NAME AND ADDRESS OF LENDER]

RE: Loan Number*

Ladies and Gentlemen:

We represent Bob Borrower. As part of his estate planning, Mr. Borrower has transferred the real property subject to the above-referenced mortgage to an inter vivos trust.

The transfer of property to the trust was subject to the mortgage and Mr. Borrower remains liable on the mortgage. The use and occupancy of the property as [residential, rental, commercial] property will remain the same.

A copy of the recorded deed is enclosed for your records.

Yours very truly,

Abe Attorney

Enclosure

cc: Mr. Bob Borrower (without enclosure)

real property containing less than five dwelling units, including a lien on stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home.[25] The exempt transfers include a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.[26] Following the transfer of the property to the trust, the due-on-sale clause will continue to be valid and enforceable in the event of a future transfer by the trustee.[27]

Under the Garn-St. Germain Depository Institutions Act, the term "lender" refers to a person or government agency making a real property loan or any assignee or transferee, in whole or in part, of such person or agency.[28] In the case of *In re Black*,[29] a federal district court considered the meaning of the term "lender." The case involved mortgaged real property that was transferred from a husband to a wife pursuant to a property settlement agreement. Both the property and the transaction were protected under the Act. When the wife defaulted on the mortgage, the lender, a large private banking institution, obtained a foreclosure judgment. Before the foreclosure sale, the wife filed for bankruptcy protection under Chapter 13 and the lender was stayed from foreclosing. The lender sought to avoid the stay, arguing that there was no default subject to the bankruptcy because, under a due-on-sale provision, the balance due became immediately due and payable when the property was transferred to the wife. The wife claimed that the Act prohibited the lender from enforcing the due-on-sale clause. The *Black* court ruled that the Act did not apply because the mortgagee was not a lender within the meaning of the Act.[30] According to the court, the mortgagee was neither a "person" nor a "government agency" within the meaning of the statute.[31] Without citing any authority for its conclusion, the court apparently construed the term "person" as referring solely to individuals, and not to corporations such as the mortgagee in the case. The court ultimately ruled in favor of the wife, however, because the mortgagee had not attempted to enforce the due-on-sale clause prior to the bankruptcy filing.[32]

The term "person" is not defined in the Garn-St. Germain Depository Institutions Act. In common statutory usage, however, the term is not generally limited to individuals, but includes entities as well. For example, for purposes of the federal law that sets forth lending limits for national banking associations, the term "person" is defined to include an individual, sole proprietorship, partnership, joint venture, association, trust, estate, corporation, and similar entities or organizations.[33] Similarly, the Internal Revenue Code defines the term "person" to include an individual, trust, estate, partnership, association, company, or corporation.[34] The limitation of the term "person" in the *Black* case to individuals appears to be an overly narrow construction that is inconsistent with the use of the term in other contexts. Moreover, the exclusion of nongovernment corporate lenders from the scope of the Act seems inconsistent with the purpose of the Act, which is to alleviate the harshness of due-on-sale clauses in part by preempting enforcement of the clauses in certain transactions involving residential realty.

When a transfer of residential realty is protected by the federal preemption statute, the attorney should consider whether to notify the lender of the transfer to the trust. A sample letter for this purpose is set forth in Figure 5.4. Because notification of the lender is not required to qualify for protection under the Act, the attorney may decide that such notification is an unnecessary step.

## FIGURE 5.4

### Letter Notifying Lender of Exempt Transfer

[NAME AND ADDRESS OF LENDER]

RE: Loan Number*

Ladies and Gentlemen:

We represent Bob Borrower. As part of his estate planning Mr. Borrower has transferred the real property subject to the above-referenced mortgage to an inter vivos trust.

The property transferred is residential real property containing less than five dwelling units. Mr. Borrower is and remains a beneficiary of the trust, and the transfer did not involve a transfer of rights of occupancy in the property. The transfer was subject to the mortgage and Mr. Borrower remains liable on the mortgage. Under Section 1701j-3(d)(8) of the Garn-St. Germain Depository Institutions Act of 1982, the due-on-sale provision in Clause * of Article* of the mortgage is not enforceable by reason of the transfer.

A copy of the recorded deed is enclosed for your records.

Yours very truly,

Abe Attorney

Enclosure

cc: Mr. Bob Borrower (without enclosure)

If a transfer of mortgaged real property (such as commercial property or residential property with five or more dwelling units) is not protected by the Garn-St. Germain Depository Institutions Act and the mortgage contains a due-on-sale clause, the attorney should advise the client that acceleration of the balance due could be triggered by the transfer to the trust unless prior written assurance is obtained from the lender that the clause will not be invoked. A sample letter requesting lender approval of a transfer of encumbered realty to a trust is set forth in Figure 5.5. Mortgage lenders routinely approve requests not to enforce a due-on-sale clause on the transfer of realty to a revocable trust. Because there is always a possibility that a particular lender may not cooperate, however, the executed deed should be held in the attorney's file for recording after consent is secured.

## 4. Special Considerations

### *a. Homestead Issues*

*Creditor Protection.* Homestead property is commonly subject to protection from seizure for the claims of creditors under state law.[35] A personal residence and a specified acreage of surrounding land generally constitutes a homestead property; a homestead interest may also be expressed as a specific dollar amount. Before transferring homestead property to a trust, it is essential for the attorney to consider the possible impact of the transfer on the homeowner's creditor protection.

*In re Bosonetto*[36] considered the protected status of Florida homestead property that was owned by a revocable living trust. Florida's constitution contains a broad exemption from creditor's claims for homestead property owned by a natural person.[37] The defendant invoked the constitutional homestead protection to avoid the claim of a judgment creditor. After evaluating a series of transactions involving the sale of Michigan property, the defendant's creation of a revocable living trust, the assignment of a contract for deed on the Michigan property to the trust, and the reinvestment of the sales proceeds into a Florida residence, the federal bankruptcy court decided that the defendant's Florida property was owned by her revocable living trust, either outright or under a resulting trust. Literally construing the Florida constitution, the court then held, without citing any supporting authority, that the homestead protection was not available to the defendant because the trust was not a natural person. Although the *Bosonetto* case was decided by a bankruptcy court and is not binding on the Florida courts, the holding in *Bosonetto* has created uncertainty in Florida regarding the status of creditor protection when homestead property is transferred to a trust.

In contrast to the uncertainty in Florida, clarity prevails in New Hampshire, which has a statute directly addressing the homestead right when property is transferred to a revocable trust. The New Hampshire law provides:[38]

> A conveyance of real property by deed to one or more trustees of a revocable trust shall not result in the loss of homestead rights of any person executing the deed (unless the deed contains an express release of homestead rights by such person) provided that such re-

**FIGURE 5.5**

**Letter Requesting Lender's Waiver**

[NAME AND ADDRESS OF LENDER]

RE: Loan Number*

Ladies and Gentlemen:

We represent Bob Borrower. As part of his estate planning, Mr. Borrower wishes to transfer the real property subject to the above-referenced mortgage to an inter vivos trust.

The transfer of property to the trust will be subject to the mortgage and Mr. Borrower will remain liable on the mortgage. The use and occupancy of the property as [residential, rental, commercial] property will remain the same. A copy of the proposed deed is enclosed for your review.

Clause * of Article * of the above-referenced mortgage provides that [QUOTE OR SUMMARIZE DUE-ON-SALE CLAUSE].

We request that you confirm to us in writing that you consent to the proposed transfer to the trust and that the transfer will not cause all or any part of the balance due to become immediately due and payable under Clause * of Article *.

Please do not hesitate to contact the undersigned if you have any questions regarding the proposed transfer.

Yours very truly,

Abe Attorney

Enclosure

cc: Mr. Bob Borrower (without enclosure)

> tained homestead rights in any such property shall not be enforceable against any other person to the extent such other person acquired an interest in or lien on the property after its conveyance into the trust without having notice of the revocability of the trust. Such notice may be given by the inclusion of the word "revocable" in the name of the trust as recited in the deed, or by the recitation in the deed or a subsequently recorded document that at the time of the conveyance the trust was a revocable trust.

The fact that homestead creditor protection will be lost upon transferring the property to a trust, or the fact that the protected status may be uncertain, does not necessarily mean that homestead property should be left out of a trust. The present and future significance of protecting the homestead from creditors' claims depends on the client's individual circumstances. For example, a wealthy retired individual with a good umbrella liability insurance policy and no debt may determine that the protection against incapacity afforded by a revocable living trust is more valuable than protecting his homestead property against unlikely future claims of creditors. In contrast, a young neurosurgeon whose home represents a considerable portion of her net worth may be far less concerned with providing for incapacity or avoiding probate than with protecting her assets against potential malpractice judgments. The important point is that the attorney advises the client of the potential risks associated with funding homestead property into a trust so that the client can make an informed decision.[39]

*Family Protection.* To promote a policy of protecting families on the death of a breadwinner, some states allow a surviving spouse and minor children an interest in homestead property, such as a life estate, the right to occupy the home until the occurrence of a specified event, or a fee simple interest.[40] The interests of the spouse and minor children may affect both inter vivos and testamentary transfers of the homestead property. Before transferring homestead property to a trust, it is essential for the attorney to consider whether any family protection measures prevent the transfer. For example, if a homeowner has minor children, it may not be possible for the homeowner to transfer the property to a revocable living trust until all children reach the age of majority. The attorney should also consider to what extent and how the protected family members can waive their homestead rights in order to accommodate the estate plan. Of course, minor children are not legally competent to waive their rights. If there are no minor children, however, a homeowner may be able to transfer homestead property to a revocable living trust if the spouse waives his or her homestead rights by joining in the deed, by marital agreement, or by another authorized method.

### *b. Property Tax Exemptions*

The estate planning attorney should consider the impact, if any, of the transfer of a residence to a trust on state property tax exemptions that may be available for residential or homestead property. Exemptions may include a specified amount for homestead property as well as smaller amounts for veterans and former prisoners of war. To preserve the exemptions, a settlor may have to record the trust document or

furnish a copy of the trust document to the local property tax officials; however, the alternative of recording or furnishing a memorandum of trust or other trust summary may be available.

The attorney should also advise the client whether it is necessary to reapply for the exemptions following a transfer of homestead property to a trust and, if so, the deadline for submitting the application. A client who loses the property tax exemption, even for one year, by forgetting to reapply for the exemption tends to be highly disgruntled. Thus, if a reapplication is necessary, the attorney should record the deed transferring the homestead and return the original deed and any other documents required to reapply to the client as soon as possible. A sample letter to a client transmitting the recorded documents and explaining the required procedure is set forth in Figure 5.6.

### *c. Property Insurance*

The estate planning attorney should consider whether a transfer of real property to a trust will affect coverage under a homeowner's or other property insurance policy. In the case of the settlor's residence, the coverage is generally not affected so long as the settlor continues to reside in the home.[41] There are steps that an attorney may consider, depending on the particular property and the degree of precaution the attorney wishes to take. One option is to advise the client to contact the insurance agent, explain the proposed transfer of property and its purposes, and inquire about the impact on the insurance coverage. An alternative approach is to notify the insurance agent that the property was transferred and state that the client will assume that the policy coverage will not be affected unless advised otherwise. Some attorneys recommend naming the trust as an additional insured under the existing policy.[42] If the policy coverage would be adversely affected by the transfer of the property to the trust, the policy can be transferred to, or reissued in the name of, the trustee of the trust. Many estate planning attorneys will simply transfer the property without taking any special steps concerning the insurance coverage.

### *d. Condominiums*

Ownership of a condominium is evidenced by a deed. The interest includes a condominium unit and an undivided interest in the common elements, as set forth in a declaration of condominium. Accordingly, a settlor may convey an interest in a condominium to a trust by deed.[43]

The attorney should review the articles of incorporation and by-laws of the condominium association to ascertain whether consent of the board of directors is required for a transfer of a unit. The governing documents may authorize owners to transfer their interests to their revocable living trusts. If consent is required, the prudent approach is to seek the board's approval. The board will generally consider the issue at a regular meeting, so it is probably wise for the client to submit a written request and appear at the meeting to answer any questions that the board may have. A perennial concern among condominium owners and management is that too few units will be owner occupied and too many units will be leased to tenants. If the per-

**FIGURE 5.6**

**Letter Regarding Property Tax Exemption**

Ms. Cathy Client
123 Main Street
City, State 12345-6789

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Homestead Property Tax Exemption

Dear Cathy:

Now that you have transferred ownership of your homestead property from your individual name to your trust, you must reapply for your homestead exemption. The last day to reapply is March 1, 2004, but we suggest that you take care of this matter as soon possible so that it does not get inadvertently overlooked. When you go to the property appraiser's office, take with you a copy of your recorded Conveyance Deed to Trustee, your original recorded Memorandum of Trust, and a copy of your trust. Enclosed is a highlighted copy of a form letter from the property appraiser's office that describes the application procedure and the additional items you will need to present.

The following original documents are also enclosed:

1. Conveyance Deed to Trustee, recorded in Official Records Book 2468, Page 1357, Public Records of Capital County, State; and

2. Memorandum of Trust, recorded in Official Records Book 2468, Page 1360, Public Records of Capital County, State.

After you reapply for the homestead exemption, the original documents should be placed in a safe deposit box or other secured location for safekeeping.

Please let me know if you have any questions regarding the refiling procedure. It is our pleasure to assist you with your estate planning.

Yours very truly,

Ann Attorney

Enclosures

centage of leased units is high, lenders may be unwilling to finance purchases of units, which adversely affects the value of the units as well as the ability to resell them. When a client owns and occupies a condominium unit, a transfer to a revocable living trust will not change the unit's status as owner-occupied. Thus the board will have no reason to deny the request. Nevertheless, tales of arbitrariness, pettiness, or worse abound when it comes to condominiums. Some attorneys with experience in this field take the position that seeking board approval of a transfer to a trust is likely to raise more problems than it will solve. Moreover, if the condominium association finds out about the transfer and questions it, the matter can usually be resolved by furnishing the board with the name of the person entitled to vote for the unit and other information that it requires. As is frequently the case in funding matters, the attorney will have to evaluate not only the technical transfer requirements but also the surrounding circumstances in advising the client how to proceed.

### *e. Time Shares*

Ownership of a time share is generally evidenced by a deed. The interest in real property entails the right to occupy a specific unit for a specified week or weeks during each year. For example, the legal description of a time share may be "Unit Week Numbers 51 and 52 in Condominium Parcel Number A-156 of SEABREEZE RESORT & RACQUET CLUB, a Condominium, according to the Declaration of Condominium thereof." The attorney should examine the ownership agreement to determine whether consent is required for the transfer of a time share. Once consent is obtained, the time share can be conveyed by deed.[44]

A fee is typically charged when ownership of a time share is transferred, even if the transfer is to a revocable trust of an existing owner. Depending on the resort or vacation property involved, some clients proclaim that the administrative fee is more than the time share is worth. Such clients are very reluctant to proceed with the transfer, particularly if the property is located in another state and it will be necessary to find an attorney in that state to prepare the deed. If the client decides not to transfer a time share, the estate planning attorney should confirm in writing that the client elected not to transfer the time share after being advised to the contrary.[45]

## 5. Cooperative Housing Corporations

An interest in a cooperative housing corporation is evidenced by a stock certificate and a lease of a dwelling unit. If certain requirements are met, tenant-stockholders in a cooperative housing corporation are allowed to deduct their proportionate shares of the corporation's expenses for real estate taxes and interest on indebtedness incurred to acquire or improve the property.[46]

The articles of incorporation or by-laws of a cooperative housing corporation generally require prior approval by the board of directors of a proposed transfer of ownership. Thus a settlor must seek board approval before transferring an ownership interest in a cooperative housing corporation to a trust. Once approval is obtained, the stock certificate can be retitled in the name of the trust and the lease of the dwelling unit can be assigned to the trust.[47]

## 6. Leases

A party's interest in a lease of real property can be assigned to a living trust of the lessor or the lessee unless the terms of the lease prohibit the assignment. The attorney should request a copy of the lease agreement to review the rights of the parties concerning assignment. Most leases either expressly permit assignment by the lessor or do not address the issue of assignment by the lessor. Thus, if a client owns real property and leases it to a tenant, it is usually permissible for the client to assign his or her interest in the lease to a living trust. A sample "Assignment of Lease" is set forth in Figure 5.7. In contrast, most leases either expressly prohibit assignment and subleasing by the lessee or permit assignment with landlord's consent. Thus, if the client is a lessee, it may not be possible to assign his or her interest under the lease to a living trust. If the lease is renewed, the landlord may be willing to substitute the trustee of the trust for the lessee individually at that time.

Because an assignment of lease pertains to real property, it should be prepared for execution according to the requirements for the execution of deeds. If the original lease was recorded, the assignment should contain the appropriate references to the public records for the lease and the assignment should also be recorded. If a landlord assigns his or her interest in a lease to a revocable living trust, the tenant should be advised to make future rental payments to the trustee. A sample letter notifying a tenant about the assignment is set forth in Figure 5.8.

## 7. Oil, Gas, and Mineral Interests

Oil, gas, and mineral interests can be transferred to a trust. The procedure for changing ownership of the interest from the settlor to the trust depends, inter alia, on the nature of the interest, the operator, and the state in which the production occurs.

The right to explore and develop gas and oil on a particular tract of land is acquired by lease. The working interests may include operating as well as nonoperating interests. Assume that a client owns a nonoperating working interest. The first step may be to contact the independent oil company that operates the wells to request an assignment form. After the assignment of working interest has been properly executed by the client, it may need to be recorded in the public records of the county and state where the production occurs. After receiving a copy of the recorded assignment, the oil company will furnish a division order for the interest. Upon receipt of the signed division order, the oil company will finalize the transfer on its records and all future payments will be sent to the trustee. If a working interest was acquired by lease from a state or the federal government, approval of the appropriate government agency must generally be obtained before the interest can be assigned.

Both landowner's royalties, which are retained by the lessors, and overriding royalties, which are carved out of the working interests, entitle the owner to a share of gross production. Royalty interests are generally transferred by assignment. Whether recording is mandatory or optional, royalty assignments are generally recorded in the applicable public records.

FIGURE 5.7

**Assignment of Lease**

ASSIGNMENT OF LEASE

For good and valuable consideration, the undersigned, **JOE JONES** ("Assignor"), hereby assigns all his interest under that certain Lease Agreement, dated October 1, 2002, between **Tad Tenant,** as Tenant, and Assignor, as Landlord, as recorded in Official Records Book 1234, Page 5678, of the Public Records of County, State, to **JOE JONES, AS TRUSTEE OF THE JOE JONES TRUST DATED MAY 1, 2003.**

DATED this May 1, 2003.

WITNESSES:

_____ _____

**JOE JONES**

_____

[NOTARY PROVISION]

**FIGURE 5.8**

**Letter Notifying Tenant about Assignment**

Tom Tenant
123 Maple Street
City, State 22222

RE: Assignment of Lease Agreement

Dear Mr. Tenant:

We represent Joe Jones, landlord under the Lease Agreement, dated October 1, 2002. This letter will notify you that Mr. Jones has assigned the Lease Agreement to Joe Jones, Trustee of the Joe Jones Trust Dated May 1, 2003. Please make all future rental payments payable to *"Joe Jones, Trustee of the Joe Jones Trust Dated May 1, 2003."* The address will remain the same.

Please let us know if you have any questions. Thank you for your attention in this matter.

Yours very truly,

Ann Attorney

cc: Mr. Joe Jones

## B. TANGIBLE PERSONAL PROPERTY

### 1. Ownership Certified in Writing

#### *a. Automobiles*

Practices of attorneys vary concerning the transfer of automobiles to a revocable inter vivos trust. If an automobile is to be included in a trust, the vehicle must be registered in the trustee's name.[48] The registration may require payment of the standard title, registration, and impact fees for the applicable state and county. A sales or excise tax may also apply upon the transfer from the settlor to the trustee. The insurance company should be notified of the transfer and any required changes to the policy implemented. If a client is reluctant to incur the additional expense of transferring title to a vehicle and expects to purchase a new vehicle in the near future, the client may prefer to leave the existing vehicle in his or her name until it is sold and then title the new vehicle in the name of the trustee from the outset.

Some states have a special procedure from transferring title to a decedent's automobile at death that does not involve a formal probate proceeding.[49] In such cases, some attorneys recommend leaving title to automobiles out of a living trust because of the relative ease of transfer at death. Some states have a special expedited or abbreviated probate for small estates. For example, a summary administration may be available if the value of the entire probate estate does not exceed a specified amount.[50]

Notwithstanding the cost of transferring an automobile to a living trust, attorneys should exercise caution in advising clients to retain title to automobiles in their own names. If the attorney is relying on a summary administration to pass title to an automobile at the settlor's death, several factors must be considered. First, it is possible that, due to the value of the automobile at death combined with the value of other property that may be left out of the trust either intentionally or inadvertently, the summary procedure may be unavailable and a full probate required. Even if the estate qualifies for the summary procedure, there will be some fees incurred in filing the petition for the summary administration. More important, a revocable living trust is designed to accomplish the dual purposes of providing for the settlor's incapacity and avoiding probate. Even if probate can be avoided for an automobile by a special procedure or summary administration, the possibility that the client may become incapacitated cannot be overlooked. If the client has not appointed an attorney-in-fact under a durable power of attorney, or if the state agency resists the use of a durable power of attorney to sell a vehicle, it may be necessary to appoint a guardian in order to sell or otherwise transfer the incapacitated client's automobile. If a client elects not to transfer title to an automobile to a revocable living trust, the attorney may wish to confirm the decision in writing with an explanation of the potential issues that may be raised by omitting the automobile from the trust.

#### *b. Motor Homes*

Motor homes are treated like automobiles for purposes of title registration. The transfer of automobiles to a living trust is discussed in Part B.1.a of this Chapter.

*c. Mobile/Manufactured Homes*

The requirements for transferring mobile or manufactured homes to a trustee vary widely among the states.[51] A threshold issue is whether the mobile or manufactured home is treated as real or personal property under the applicable state law. If the home is considered realty, an additional question is whether title to the home is transferred from the client to the trustee by deed or by another means.[52] If the home is treated as personalty, then a state agency, such as a department of motor vehicles, may issue a form of registration that can be transferred like an automobile registration.

For example, in Florida, title to a mobile home is evidenced by a certificate of title similar to the certificate of title to a motor vehicle.[53] A mobile home is taxed as real property if the owner of the mobile home is also the owner of the land on which the mobile home is permanently affixed.[54] A mobile home that is not taxed as real property must have a current license plate.[55] If the owner of a mobile home affixed to land desires to transfer the land and mobile home to a revocable living trust, the attorney should prepare a deed to transfer the land and a new certificate of title should be issued in the name of the trustee to transfer title to the mobile home.

Some states have a particular agency or department that oversees mobile or manufactured homes. In Texas, for example, manufactured housing is regulated by the state's Department of Housing and Community Affairs.[56] Titles to manufactured homes are issued through the Manufactured Housing Division. To transfer title of a manufactured home to a revocable living trust, the settlor must submit the original title, an application for a manufactured home title, and, depending on whether the home is being moved and whether there is a lender, an affidavit and several other forms.[57]

*d. Boats*

The requirements for transferring a boat to a revocable living trust depend on whether the boat is a documented vessel or a locally registered vessel. The transfer requirements for both categories of boats are discussed below.

**i. Federally Documented Vessels**

Certain larger boats are documented with the United States Coast Guard, which is a form of national vessel registration.[58] In general, documented vessels must be wholly owned by a citizen or citizens of the United States.[59] When applied to a trust, the citizenship requirement mandates U.S. citizenship for all trustees and all beneficiaries with an enforceable interest in the trust.[60] To register a documented vessel in the name of a trustee, the following must be submitted to the Coast Guard:[61]

(1) Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; Redocumentation (CG-1258);
(2) Bill of Sale (CG-1340) (original and one copy);
(3) Present owner's Certificate of Documentation;
(4) If the vessel is subject to a mortgage, Consent of Mortgagee (CG-4593); and
(5) Applicable fee, payable to U.S. Coast Guard, or credit card authorization.

A sample completed Coast Guard application is set forth in Figure 5.9. A sample Coast Guard bill of sale is set forth in Figure 5.10. A sample transmittal letter for submitting the required documents to the Coast Guard is set forth in Figure 5.11. Upon filing the required documents and payment of the applicable fee, the Coast Guard will issue a new certificate of documentation in the name of the trustee. A certificate of documentation must be renewed annually.

### ii. Locally Registered Vessels

Most small recreational boats are not federally documented but rather are registered with the appropriate state or local authority. In many states, the registration of boats is similar to the registration of automobiles. The registration may require payment of the standard title and registration fees for the applicable state and county. A sales or excise tax may also apply upon the transfer from the settlor to the trustee. If the boat is insured, the insurance company should be notified of the transfer and any required changes to the policy implemented. If the boat is financed, the loan agreement should be reviewed to ascertain whether any restrictions on transfer apply to a transfer to the trust.

### *e. Airplanes*

The transfer of an airplane title to a trust is a rare instance in which federal law, rather than state law, controls the retitling of an asset. Airplanes are registered by the United States Department of Transportation. In order to transfer title to an aircraft into a trust, the following items must be supplied to the Federal Aviation Administration (FAA):[62]

(1) Aircraft Bill of Sale;
(2) Aircraft Registration Application;
(3) Affidavit of Citizenship;
(4) Certified copy of the trust agreement; and
(5) $5 fee.

The bill of sale is furnished as evidence of a trustee's ownership of the aircraft. The FAA has a form for this purpose titled "Aircraft Bill of Sale" (AC Form 8050-2). The bill of sale is a duplicate form, with the original going to the FAA and the copy for the owner. A sample completed aircraft bill of sale is set forth in Figure 5.12. A bill of sale prepared by the attorney that is equivalent to the aircraft bill of sale may be used as an alternative to the FAA form. The "Aircraft Registration Application" (AC 8050-1) is a triplicate form. The white and green copies are submitted to the FAA, and the pink copy is retained by the applicant. The application requires information about the manufacturer, model number, and serial number of the airplane. The name of the applicant must be identical to the name of the purchaser shown on the bill of sale.[63] The type of registration must also be indicated on the application in a checked box. A sole trustee checks the box for an individual and co-trustees check the box for co-owners. A sample completed aircraft registration application is reprinted in Figure 5.13. Two citizenship requirements must be met when a trust applies for title to an airplane. First,

# FIGURE 5.9

## Coast Guard Application

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-1258 (REV. 9-87)

**APPLICATION FOR INITIAL ISSUE, EXCHANGE, OR REPLACEMENT OF CERTIFICATE OF DOCUMENTATION; REDOCUMENTATION**

THIS SECTION FOR COAST GUARD USE ONLY

CASE NUMBER:

CHECK #:

FEE: $

NOTE: FILING THIS APPLICATION DOES NOT ENTITLE A VESSEL TO DOCUMENTATION OR TO ANY CHANGES SOUGHT ON A CERTIFICATE OF DOCUMENTATION. OFFICIAL NUMBERS DESIGNATED ON THE BASIS OF THIS APPLICATION ARE NOT TRANSFERABLE. ONLY A CURRENT CERTIFICATE OF DOCUMENTATION IS VALID FOR VESSEL OPERATION.

APPROVED:

DATE:

### I. COMPLETE FOR ALL APPLICATIONS

A. VESSEL NAME: Sun 'n Fun

B. OFFICIAL NUMBER (IF AWARDED) AND HULL IDENTIFICATION NUMBER IF ANY: DLK39126394

C. NAME OF MANAGING OWNER: Cathy Client, Trustee of the Cathy Client Revocable Trust, dated 5/1/2003
TELEPHONE NUMBER (OPTIONAL): 321-654-0987
SOCIAL SECURITY OR TAX ID NUMBER: 123-45-6789

D. ADDRESS OF MANAGING OWNER: 123 Flamingo Dr.
Sunisland, FL 12345
SHOW PHYSICAL ADDRESS IF DIFFERENT FROM MAILING ADDRESS

E. NAMES AND SOCIAL SECURITY OR TAX ID NUMBERS OF ALL OTHER OWNERS: N/A
ATTACH SHEET LISTING ADDITIONAL OWNERS IF NECESSARY

F. MAILING PORT INCLUDING STATE (TO BE MARKED ON VESSEL): Port Canaveral, FL

G. CITIZENSHIP (SEE INSTRUCTIONS REGARDING STATUS OF ALIENS LAWFULLY ADMITTED FOR PERMANENT RESIDENCE) **VESSEL OWNED:**

☐ BY ONE OR MORE INDIVIDUALS

☐ BY JOINT VENTURE OR ASSOCIATION

I (WE) CERTIFY THAT ALL OWNERS OF THIS VESSEL ARE CITIZENS OF THE UNITED STATES

I (WE) CERTIFY THAT ALL MEMBERS OF THIS (JOINT VENTURE) (ASSOCIATION) ARE CITIZENS OF THE UNITED STATES, ELIGIBLE TO DOCUMENT THE VESSELS COVERED BY THIS APPLICATION WITH THE ENDORSEMENT(S) SOUGHT IN THEIR OWN RIGHT.

☒ IN A TRUST ARRANGEMENT

I (WE) CERTIFY THAT ALL TRUSTEES AND ALL BENEFICIARIES WITH AN ENFORCEABLE INTEREST IN THIS TRUST ARRANGEMENT ARE CITIZENS OF THE UNITED STATES, ELIGIBLE TO DOCUMENT VESSEL WITH THE ENDORSEMENT(S) SOUGHT IN THEIR OWN RIGHT.

☐ BY A PARTNERSHIP OR LIMITED LIABILITY COMPANY

A. GENERAL PARTNERSHIP OR LIMITED LIABILITY COMPANY (LLC)

B. LIMITED PARTNERSHIP

I (WE) CERTIFY THAT ALL PARTNERS IN THIS PARTNERSHIP (MEMBERS OF THIS LLC) ARE CITIZENS OF THE UNITED STATES ELIGIBLE TO DOCUMENT VESSELS IN THEIR OWN RIGHT, AND THAT THE PARTNERSHIP LLC MEETS THE FOLLOWING EQUITY REQUIREMENTS: EQUITY OWNED BY U.S. CITIZENS,
☐ AT LEAST 50% ☐ MORE THAN 50%, LESS THAN 75% ☐ 75% OR MORE

I (WE) CERTIFY THAT ALL GENERAL PARTNERS IN THIS PARTNERSHIP ARE CITIZENS OF THE UNITED STATES, ELIGIBLE TO DOCUMENT VESSELS IN THEIR OWN RIGHT AND THAT THE PARTNERSHIP MEETS THE FOLLOWING EQUITY REQUIREMENTS, EQUITY INTEREST OWNED BY CITIZENS OF THE U.S. ELIGIBLE TO DOCUMENT VESSELS IN THEIR OWN RIGHT WITH THE ENDORSEMENT SOUGHT.
☐ AT LEAST 50% ☐ MORE THAN 50%, LESS THAN 75% ☐ 75% OR MORE

☐ VESSEL OWNED BY A CORPORATION

A. STATE OF INCORPORATION _____

B. CITIZENSHIP OF PRESIDENT (AND OTHER CHIEF EXECUTIVE OFFICER, IF ANY) _____

C. CITIZENSHIP OF CHAIRMAN OF THE BOARD _____

D. NUMBER OF DIRECTORS NECESSARY TO CONSTITUTE A QUORUM _____

E. NUMBER OF ALIEN DIRECTORS _____

F. PERCENTAGE OF STOCK OWNED BY U.S. CITIZENS ELIGIBLE TO DOCUMENT VESSELS IN THEIR OWN RIGHT, WITH THE ENDORSEMENT(S) SOUGHT ON THIS APPLICATION (APPLIES TO ALL TIERS OF OWNERSHIP)
☐ LESS THAN 50% ☐ AT LEAST 50% ☐ MORE THAN 50%, LESS THAN 75% ☐ 75% OR MORE

☐ VESSEL OWNED BY A CORPORATION QUALIFIED AND APPLYING UNDER 46 CFR 68.01 (BOWATER)

CURRENT CERTIFICATE OF COMPLIANCE ATTACHED. I (WE) CERTIFY THAT THE CORPORATE STRUCTURE HAS NOT CHANGED SINCE ISSUANCE OF THAT CERTIFICATE, AND THAT THE VESSEL, IF SELF-PROPELLED, IS LESS THAN 500 GROSS TONS.

☐ VESSEL OWNED OR OPERATED BY NOT-FOR-PROFIT OIL RECOVERY COOPERATIVE

COPY OF CURRENT LETTER OF QUALIFICATION ATTACHED. I (WE) CERTIFY THAT THE INFORMATION ON FILE WITH REGARD TO COOPERATIVE AND ISSUANCE OF THAT LETTER REMAINS UNCHANGED.

H. ENDORSEMENTS FOR WHICH APPLICATION IS MADE. (IF MORE THAN ONE, INDICATE ESTIMATED PERCENTAGE FOR EACH).

☒ RECREATIONAL ☐ COASTWISE ☐ FISHERY ☐ COASTWISE (BOWATER ONLY)

☐ REGISTRY ☐ OIL SPILL RESPONSE

☐ COASTWISE UNDER CHARTER TO AN ENTITY QUALIFIED TO ENGAGE IN COASTWISE 46 APP USC 802. COPY OF CHARTER ON FILE WITH U.S.C.G.

PREVIOUS EDITION OBSOLETE SN 7530-00-F01-0800

## FIGURE 5.9 *Continued*

## Coast Guard Application

REVERSE OF CG-1258 (REV. 9-97)

I. PRIMARY SERVICE

- ☐ COMMERCIAL FISHING BOAT
- ☐ FISH PROCESSING VESSEL
- ☐ FREIGHT SHIP
- ☐ FREIGHT BARGE
- ☐ INDUSTRIAL VESSEL
- ☐ MOBILE OFFSHORE DRILLING UNIT
- ☐ OIL RECOVERY
- ☐ OFFSHORE SUPPLY VESSEL
- ☐ PASSENGER (6 OR FEWER)
- ☐ PASSENGER (MORE THAN 6)
- ☐ PASSENGER BARGE (6 OR FEWER)
- ☐ PASSENGER BARGE (MORE THAN 6)
- ☐ PUBLIC FREIGHT
- ☐ PUBLIC TANKSHIP/BARGE
- ☐ PUBLIC VESSEL, UNC
- ☐ RESEARCH VESSEL
- ☐ SCHOOL SHIP
- ☐ TANK BARGE
- ☐ TANK SHIP
- ☐ TOWING VESSEL
- ☐ UNCLASSIFIED VESSEL
- ☒ RECREATIONAL

J. PURPOSE OF APPLICATION

- ☒ 1. EXCHANGE OF CERTIFICATE OF DOCUMENTATION.
- ☐ 2. REPLACEMENT OF LOST, WRONGFULLY WITHHELD OR MUTILATED CERTIFICATE OF DOCUMENTATION.
- ☐ 3. RETURN TO DOCUMENTATION FOLLOWING DELETION, NAME OF VESSEL WHEN LAST DOCUMENTED:
- ☐ 4. APPLICATION FOR OFFICIAL NUMBER AND FIRST CERTIFICATE OF DOCUMENTATION. VESSEL
  - ☐ WAS BUILT AT _____ IN _____ (MONTH/YEAR)
  - OR
  - ☐ IS UNDER CONSTRUCTION AT _____ AND IS SCHEDULED FOR COMPLETION IN _____

HULL MATERIAL: ☐ WOOD ☐ STEEL ☐ FIBROUS REINFORCED PLASTIC ☐ ALUMINUM ☐ CONCRETE.
☐ OTHER (DESCRIBE) _____

APPROXIMATE LENGTH OF VESSEL _____

PREVIOUS NAMES, NUMBERS, OR FOREIGN REGISTRATIONS OF VESSEL _____

K. CERTIFICATION: I (WE) CERTIFY THAT:

(A) I AM (WE ARE) A CITIZEN(S) OF THE UNITED STATES AND LEGALLY AUTHORIZED TO EXECUTE THIS APPLICATION IN THE CAPACITY SHOWN;

(B) THAT THE VESSEL(S) TO WHICH THIS APPLICATION APPLIES;

(i) ☐ HAS (HAVE) BEEN MARKED OR ☒ WILL BE MARKED

IN ACCORDANCE WITH THE DIRECTIONS IN THE INSTRUCTION SHEET (CG-1258-A) FOR THIS APPLICATION;

(ii) WILL AT ALL TIMES REMAIN UNDER THE COMMAND OF A U.S. CITIZEN, UNLESS DOCUMENTED SOLELY WITH A RECREATIONAL ENDORSEMENT,

(iii) WILL NOT BE OPERATED IN A TRADE NOT AUTHORIZED BY THE ENDORSEMENT(S) ON THE CERTIFICATE(S) OF DOCUMENTATION;

(iv) HAS NOT BEEN REBUILT SINCE LAST DOCUMENTATION

(v) THE VESSEL IS

☐ NOT TITLED UNDER A STATE OR ☒ IS TITLED UNDER THE LAWS OF FL

(C) THE NAME(S) OF THE VESSEL(S) WILL NOT BE CHANGED WITHOUT APPROVAL FROM NATIONAL VESSEL DOCUMENTATION CENTER; AND

(D) (WE) WILL PROMPTLY NOTIFY THE NATIONAL VESSEL DOCUMENTATION CENTER UPON A CHANGE IN ANY OF THE INFORMATION OR REPRESENTATIONS IN THIS APPLICATION.

| PRINTED OR TYPED NAME | SIGNATURE | CAPACITY (E.G., OWNER, AGENT, TRUSTEE, GENERAL PARTNER, CORPORATE OFFICER) |
|---|---|---|
| Cathy Client, Trustee of the Cathy Client Revocable Trust, dated 5-1-2023 | X | Trustee |

DATE: May 1, 2023

### PRIVACY ACT STATEMENT

IN ACCORDANCE WITH 5 U.S.C. 552a, THE FOLLOWING INFORMATION IS PROVIDED TO YOU WHEN SUPPLYING PERSONAL INFORMATION TO THE U.S. COAST GUARD.

1. AUTHORITY. SOLICITATION OF THIS INFORMATION IS AUTHORIZED BY 46 U.S.C., CHAPTERS 121 AND 125; 46 U.S.C. APP. 802 AND 883.
2. THE PRINCIPAL PURPOSES FOR WHICH THIS INFORMATION IS TO BE USED ARE:
   (1) TO DETERMINE CITIZENSHIP OF THE OWNER OF THE VESSEL FOR WHICH APPLICATION FOR DOCUMENTATION IS MADE; AND
   (2) TO DETERMINE ELIGIBILITY OF THE VESSEL TO BE DOCUMENTED WITH THE TRADE ENDORSEMENT SOUGHT.
3. THE ROUTINE USES WHICH MAY BE MADE OF THIS INFORMATION INCLUDE RELEASE TO LAW ENFORCEMENT OFFICIALS, TO THE GENERAL PUBLIC UNDER FREEDOM OF INFORMATION ACT, AND TO PUBLISH INFORMATION ABOUT U.S. DOCUMENTED VESSELS.
4. DISCLOSURE OF THE INFORMATION REQUESTED ON THIS FORM IS VOLUNTARY, HOWEVER, FAILURE TO PROVIDE THE INFORMATION REQUESTED WILL RESULT IN DENIAL OF THE APPLICATION FOR DOCUMENTATION, WHICH MAY PREVENT THE OWNER FROM OPERATING THE VESSEL(S) IN A SPECIFIED TRADE.

THE COAST GUARD ESTIMATES THAT THE AVERAGE BURDEN FOR THIS FORM IS 30 MINUTES. YOU MAY SUBMIT ANY COMMENTS CONCERNING THE ACCURACY OF THIS BURDEN ESTIMATE OR MAKE SUGGESTIONS FOR REDUCING THE BURDEN TO: NATIONAL VESSEL DOCUMENTATION CENTER, 792 T J JACKSON DRIVE, FALLING WATERS, WEST VIRGINIA 25419, OR OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, ATTENTION: DESK OFFICER FOR DOT/USCG, OLD EXECUTIVE OFFICE BUILDING, WASHINGTON, DC 20503.

## FIGURE 5.10

## Coast Guard Bill of Sale

OMB APPROVED
2115-0110

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG-1340 (REV. 8-92)

**BILL OF SALE**

THIS SECTION FOR COAST GUARD USE ONLY

1. VESSEL NAME: Sun 'n Fun

2. OFFICIAL NUMBER OR HULL ID NUMBER: DLK39126 6394

3. NAME(S) AND ADDRESS(ES) OF SELLERS:
Cathy Client
123 Flamingo Dr.
Sun Island, FL 12345

3A. TOTAL INTEREST OWNED (IF LESS THAN 100%) _____ %

RECORDED:
BOOK: PAGE:
PORT (IF NOT FILING PORT)
DOCUMENTATION OFFICER

4. NAME(S) AND ADDRESS(ES) OF BUYER(S) AND INTEREST TRANSFERRED TO EACH:
Cathy Client, Trustee of the Cathy Client Revocable Trust, dated 5-1-2003
123 Flamingo Dr.
Sun Island, FL 12345

4A. TOTAL INTEREST TRANSFERRED (100% UNLESS OTHERWISE SPECIFIED) _____ %

4B. MANNER OF OWNERSHIP. UNLESS OTHERWISE STATED HEREIN, THIS BILL OF SALE CREATES A TENANCY IN COMMON, WITH EACH TENANT OWNING AN EQUAL UNDIVIDED INTEREST. CHECK ONLY ONE OF THE FOLLOWING BLOCKS TO SHOW ANOTHER FORM OF OWNERSHIP.

☐ JOINT TENANCY WITH RIGHT OF SURVIVORSHIP ☐ TENANCY BY THE ENTIRETIES ☐ COMMUNITY PROPERTY

☒ OTHER (DESCRIBE) Revocable living trust

5. CONSIDERATION RECEIVED

(ONE DOLLAR AND OTHER VALUABLE CONSIDERATION UNLESS OTHERWISE STATED)

6. I (WE) DO HEREBY SELL TO THE BUYER(S) NAMED ABOVE, THE RIGHT, TITLE AND INTEREST IDENTIFIED IN BLOCK 4 OF THIS BILL OF SALE IN THE PROPORTION SPECIFIED HEREIN.

VESSEL IS SOLD FREE AND CLEAR OF ALL LIENS, MORTGAGES, AND OTHER ENCUMBRANCES OF ANY KIND AND NATURE, EXCEPT AS STATED ON THE REVERSE HEREOF. VESSEL IS SOLD TOGETHER WITH AN EQUAL INTEREST IN THE MASTS, BOWSPRIT, SAILS, BOATS, ANCHORS, CABLES, TACKLE, FURNITURE, AND ALL OTHER NECESSARIES THERETO APPERTAINING AND BELONGING, EXCEPT AS STATED ON THE REVERSE HEREOF.

7. SIGNATURES OF SELLER(S) OR PERSON(S) SIGNING ON BEHALF OF SELLER(S)
X

8. DATE SIGNED
May 1, 2003

9. NAME(S) OF PERSON(S) SIGNING ABOVE, AND LEGAL CAPACITY IN WHICH SIGNED (E.G., OWNER, AGENT, TRUSTEE, EXECUTOR)
Cathy Client, Owner

10. ACKNOWLEDGMENT (TO BE COMPLETED BY NOTARY PUBLIC OR OTHER OFFICIAL AUTHORIZED BY A LAW OF A STATE OR THE UNITED STATES TO TAKE OATHS.)

ON _____ (DATE) THE PERSON(S) NAMED IN SECTION 9 STATE:

ABOVE ACKNOWLEDGED EXECUTION OF THE FOREGOING INSTRUMENT IN THEIR STATED CAPACITY(IES) FOR THE PURPOSE THEREIN CONTAINED COUNTY:

NOTARY PUBLIC _____

MY COMMISSION EXPIRES _____

PREVIOUS EDITION OBSOLETE SN 7530-00-F01-1020

## FIGURE 5.10 *Continued*

## Coast Guard Bill of Sale

REVERSE OF CG-1340 (REV. 9-92)

(COMPLETE THIS SECTION ONLY IF VESSEL HAS NEVER BEEN DOCUMENTED AND DOES NOT HAVE A HULL IDENTIFICATION NUMBER.)

VESSEL DATA

A. BUILDER

B. BUILDER'S HULL NUMBER

C. FORMER NAME(S)

D. FORMER MOTORBOAT NUMBERS

E. FORMER ALIEN REGISTRATIONS

F. DIMENSIONS: L= B= D=

G. PERSON FROM WHOM SELLER OBTAINED VESSEL

SIGNATURE OF SELLER

WARRANTIES/APPURTENANCES/LIMITATIONS/EXCEPTIONS

INSTRUCTIONS

1. INDICATE CURRENT DOCUMENTED NAME. (IF VESSEL HAS NEVER BEEN DOCUMENTED SELLER MUST COMPLETE AND SIGN DATA SECTION ABOVE.)
2. INDICATE OFFICIAL NUMBER AWARDED TO VESSEL OR HULL IDENTIFICATION NUMBER ASSIGNED BY MANUFACTURER. (IF THE VESSEL HAS NO HULL IDENTIFICATION NUMBER AND HAS NEVER BEEN DOCUMENTED, SELLER MUST COMPLETE AND SIGN THE VESSEL DATA SECTION ABOVE.)
3. INSERT NAMES AND ADDRESSES OF ALL PERSONS SELLING VESSEL, ALONG WITH TOTAL INTEREST OWNED BY THOSE PERSONS. IF MORE ROOM IS NEEDED, AN ATTACHMENT MAY BE MADE SHOWING THE ADDRESSES OF THE SELLERS.

3A. SELF-EXPLANATORY.

4. INSERT NAMES AND ADDRESSES OF ALL BUYERS, ALONG WITH THE INTEREST TRANSFERRED TO EACH. IF THERE IS MORE THAN ONE BUYER AND NO DIVISION OF INTEREST IS SHOWN, THIS BILL OF SALE WILL RESULT IN EACH BUYER HOLDING AN EQUAL INTEREST. (IF MORE ROOM IS NEEDED, AN ATTACHMENT MAY BE MADE SHOWING THE ADDRESSES OF THE BUYERS.)

4A. SELF-EXPLANATORY.

4B. CHECK ONE OF THE BLOCKS TO CREATE A FORM OF OWNERSHIP OTHER THAN A TENANCY IN COMMON. IF "OTHER" IS CHECKED, THE FORM OF OWNERSHIP MUST BE DESCRIBED.

5. OPTIONAL IF THE AMOUNT PAID FOR THE VESSEL IS INSERTED, IT WILL BE NOTED ON THE VESSEL'S GENERAL INDEX.
6. SELF-EXPLANATORY. USE "REMARKS" SECTION ABOVE IF VESSEL IS NOT SOLD FREE AND CLEAR, OR TO LIST VESSEL APPURTENANCES WHICH ARE NOT SOLD WITH THE VESSEL.
7. SELF-EXPLANATORY.
8. SHOW THE DATE ON WHICH THE INSTRUMENT IS SIGNED.
9. IN ADDITION TO THE PRINTED OR TYPED NAME OF THE SIGNER, SHOW WHETHER THAT PERSON WAS ACTING AS AN OWNER, AS AN AGENT FOR AN OWNER, AS TRUSTEE, AS THE PERSONAL REPRESENTATIVE OR EXECUTOR OF AN ESTATE, OR OTHER CAPACITY WHICH ENTITLED THAT PERSON TO SIGN THE BILL OF SALE.
10. ANY ACKNOWLEDGMENT IN SUBSTANTIAL COMPLIANCE WITH THE LAW OF THE STATE WHERE TAKEN MAY BE ATTACHED TO THIS INSTRUMENT IN LIEU OF THE PREPRINTED ACKNOWLEDGMENT.

PRIVACY ACT STATEMENT

IN ACCORDANCE WITH 5 USC 552(A), THE FOLLOWING INFORMATION IS PROVIDED TO YOU WHEN SUPPLYING PERSONAL INFORMATION TO THE U.S. COAST GUARD.

1. AUTHORITY. SOLICITATION OF THIS INFORMATION IS AUTHORIZED BY 46 USC, CHAPTER 313 AND 46 CFR, PART 67.

2. THE PRINCIPAL PURPOSES FOR WHICH THIS INSTRUMENT IS TO BE USED ARE:

(A) TO PROVIDE A RECORD, AVAILABLE FOR PUBLIC INSPECTION AND COPYING, OF THE SALE OR OTHER CHANGE IN OWNERSHIP OF A VESSEL WHICH IS DOCUMENTED, WILL BE DOCUMENTED, OR HAS BEEN DOCUMENTED PURSUANT TO 46 USC, CHAPTER 121.
(B) PLACEMENT OF THIS INSTRUMENT IN A BOOK FOR EXAMINATION BY GOVERNMENTAL AUTHORITIES AND MEMBERS OF THE GENERAL PUBLIC.

3. THE ROUTINE USE WHICH MAY BE MADE OF THIS INFORMATION INCLUDES DEVELOPMENT OF STATISTICAL DATA CONCERNING DOCUMENTED VESSELS.

4. DISCLOSURE OF THE INFORMATION REQUESTED ON THIS FORM IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE THE INFORMATION COULD PRECLUDE FILING OF A BILL OF SALE AND DOCUMENTATION OF THE VESSEL NAMED HEREIN PURSUANT TO 46 USC, CHAPTER 121. MOREOVER, BILLS OF SALE WHICH ARE NOT FILED ARE NOT DEEMED TO BE VALID AGAINST ANY PERSON EXCEPT THE GRANTOR OR A PERSON HAVING ACTUAL KNOWLEDGE OF THE SALE. (46 USC 31321(A)).

THE COAST GUARD ESTIMATES THAT THE AVERAGE BURDEN FOR THIS FORM IS 20 MINUTES. YOU MAY SUBMIT ANY COMMENTS CONCERNING THE ACCURACY OF THIS BURDEN ESTIMATE OR MAKE SUGGESTIONS FOR REDUCING THE BURDEN TO: COMMANDANT (G-MVI), U.S. COAST GUARD, WASHINGTON, DC 20593-0001 OR OFFICE OF MANAGEMENT AND BUDGET, OFFICE OF INFORMATION AND REGULATORY AFFAIRS, ATTENTION: DESK OFFICER FOR DOT/USCG, OLD EXECUTIVE OFFICE BUILDING, WASHINGTON, DC 20503.

FIGURE 5.11

**Letter to Coast Guard Transmitting Registration Documents**

United States Coast Guard
National Vessel Documentation Center
792 T J Jackson Dr.
Falling Waters, WV 25419

RE: Transfer of Vessel to Trustee

Ladies and Gentlemen:

We represent Cathy Client in connection with her estate planning. As part of her estate planning, Ms. Client has created the Cathy Client Revocable Trust, Dated May 1, 2003 (the "Trust"). Ms. Client wishes to transfer ownership of her documented vessel, now individually owned by her, to herself as trustee of the Trust.

Enclosed are the following items:

1) Application for Initial Issue, Exchange, or Replacement of Certificate of Documentation; Redocumentation;
2) Bill of Sale (original and copy);
3) Certificate of Documentation; and
4) Check in the amount of $[applicable fee], payable to U.S. Coast Guard.

Please issue a Certificate of Documentation in the name of the trustee and return it to us at the above-referenced address.

Do not hesitate to contact me if you have any questions or require additional information to process the application. Thank you for your attention in this matter.

Yours very truly,

Ann Attorney

Enclosures

cc: Ms. Cathy Client (without enclosures)

## FIGURE 5.12

## FAA Aircraft Bill of Sale

FORM APPROVED
OMB NO. 2120-0042

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

**AIRCRAFT BILL OF SALE**

FOR AND IN CONSIDERATION OF $ 1 THE UNDERSIGNED OWNER(S) OF THE FULL LEGAL AND BENEFICIAL TITLE OF THE AIRCRAFT DESCRIBED AS FOLLOWS:

UNITED STATES REGISTRATION NUMBER N

AIRCRAFT MANUFACTURER & MODEL
CompAir 7

AIRCRAFT SERIAL No.
0365L312

DOES THIS 1st DAY OF May 19 2003 HEREBY SELL, GRANT, TRANSFER AND DELIVER ALL RIGHTS, TITLE, AND INTERESTS IN AND TO SUCH AIRCRAFT UNTO:

Do Not Write In This Block
FOR FAA USE ONLY

PURCHASER

NAME AND ADDRESS
(IF INDIVIDUAL(S), GIVE LAST NAME, FIRST NAME, AND MIDDLE INITIAL)

Fred Flyer, Trustee of the Fred Flyer Revocable Trust, Outed May 1, 2003
17 Anchor Ln.
City, State 12345

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.

IN TESTIMONY WHEREOF HAVE SET HAND AND SEAL THIS DAY OF 19

SELLER

| NAME (S) OF SELLER (TYPED OR PRINTED) | SIGNATURE (S) (IN INK) (IF EXECUTED FOR CO-OWNERSHIP, ALL MUST SIGN) | TITLE (TYPED OR PRINTED) |
|---|---|---|
| Fred Flyer | X | Owner |
| | | |
| | | |
| | | |

ACKNOWLEDGMENT (NOT REQUIRED FOR PURPOSES OF FAA RECORDING; HOWEVER, MAY BE REQUIRED BY LOCAL LAW FOR VALIDITY OF THE INSTRUMENT.)

**ORIGINAL: TO FAA**

## FIGURE 5.13

## FAA Aircraft Registration Application

FORM APPROVED
OMB No. 2120-0042

UNITED STATES OF AMERICA DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION-MIKE MONRONEY AERONAUTICAL CENTER
AIRCRAFT REGISTRATION APPLICATION

CERT. ISSUE DATE

UNITED STATES REGISTRATION NUMBER N

AIRCRAFT MANUFACTURER & MODEL: CompAir 7

AIRCRAFT SERIAL NO.: 03651.312

FOR FAA USE ONLY

TYPE OF REGISTRATION (Check one box)

☒ 1. Individual ☐ 2. Partnership ☐ 3. Corporation ☐ 4. Co-owner ☐ 5. Gov't. ☐ 8. Non-Citizen Corporation

NAME OF APPLICANT (Person(s) shown on evidence of ownership. If individual, give last name, first name, and middle initial.)

Fred Flyer, Trustee of the Fred Flyer Revocable Trust, Dated May 1, 2003

TELEPHONE NUMBER: (213) 752-8904

ADDRESS (Permanent mailing address for first applicant listed.)

Number and street: 17 Anchor Ln.

Rural Route: P.O. Box:

| CITY | STATE | ZIP CODE |
|---|---|---|
| City | State | 12345 |

☐ **CHECK HERE IF YOU ARE ONLY REPORTING A CHANGE OF ADDRESS**

**ATTENTION! Read the following statement before signing this application. This portion MUST be completed.**

A false or dishonest answer to any question in this application may be grounds for punishment by fine and / or imprisonment (U.S. Code, Title 18, Sec. 1001)

### CERTIFICATION

I/WE CERTIFY:

(1) That the above aircraft is owned by the undersigned applicant, who is a citizen (including corporations) of the United States.

(For voting trust, give name of trustee: _____), or:

CHECK ONE AS APPROPRIATE:

a. ☐ A resident alien, with alien registration (Form I-151 or Form I-551) No. _____

b. ☐ A non-citizen corporation organized and doing business under the laws of (state) _____ and said aircraft is based and primarily used in the United States. Records or flight hours are available for inspection at _____

(2) That the aircraft is not registered under the laws of any foreign country; and

(3) That legal evidence of ownership is attached or has been filed with the Federal Aviation Administration.

NOTE: If executed for co-ownership all applicants must sign. Use reverse side if necessary.

TYPE OR PRINT NAME BELOW SIGNATURE

EACH PART OF THIS APPLICATION MUST BE SIGNED IN INK

| SIGNATURE | TITLE | DATE |
|---|---|---|
| X | Trustee | 5-1-2003 |
| SIGNATURE Fred Flyer, Trustee of the Fred Flyer Revocable Trust, Dated May 1, 2003 | TITLE | DATE |
| SIGNATURE | TITLE | DATE |

NOTE: Pending receipt of the Certificate of Aircraft Registration, the aircraft may be operated for a period not in excess of 90 days, during which time the PINK copy of this application must be carried in the aircraft.

AC Form 8050-1 (12/90) (0052-00-628-9007) Supersedes Previous Edition

the trustee must be a U.S. citizen or resident alien. In addition, every trust beneficiary must be either a U.S. citizen or resident alien. The citizenship requirements are satisfied by the submission of an affidavit. A sample affidavit of citizenship is set forth in Figure 5.14. The copy of the trust document can be certified by the attorney, as discussed in Part C.3 of Chapter 3 and illustrated in Figure 3.2.[64] A sample transmittal letter for submitting the required documents to the FAA is set forth in Figure 5.15.

## 2. Ownership Not Certified in Writing

There is no formal title registration for numerous items of personal property. Examples include furniture, furnishings, clothing, jewelry, collectibles, tools, books, pictures, photographs, objects of art, china, silverware, linens, cookware, sports equipment, toys, and memorabilia. If such personal items are not transferred to a revocable living trust, the successor trustee does not have authority to sell or otherwise dispose of them if the settlor becomes incompetent. Moreover, the value of such items at a settlor's death may be such that a probate would be required in order to dispose of them properly. Items of personal property with no formal title registration are transferred to a trust by deed of gift, assignment, or bill of sale.[65] The deed of gift will typically refer to general categories of personal assets rather than specifically listing each individual item of personalty that a client owns. A sample blanket deed of gift to cover the transfer to a trust of a client's tangible personal property is set forth in Figure 5.16.

If a client owns personal property of significant value, such as an art collection or valuable antiques or jewelry, the attorney may prepare a separate deed of gift that pertains specifically to the particular asset and contains a detailed description. A deed of gift to cover the transfer to the trust of a specific item or collection of tangible personal property is set forth in Figure 5.17.

There are unique characteristics of tangible personal property that should be considered when drafting a deed of gift. First, these items remain in the physical possession of the settlor, even after ownership of the items is transferred to a trustee. To address the significance of the settlor's possession, the deed of gift may include language stating that possession of the tangible items will remain in the grantor notwithstanding the transfer of title to the trustee.[66] Another feature of tangible personal property is that particular items within a given category tend to fluctuate over time. For example, clothing wears out or is given away, and additional clothing is purchased. The issue of tangible personal items acquired after the initial assignment to the trustee must be addressed. This can be handled in two ways. The first option is for the deed of gift expressly to include any items acquired by the grantor after the date of the initial deed of gift. Some attorneys who doubt the effectiveness of such a provision to transfer ownership of after-acquired assets to the trustee recommend that the client execute annual deeds of gift to the trustee to make sure that subsequently acquired assets are properly funded into the trust.[67]

When tangible personal property is insured, the insurance company providing the property and casualty insurance coverage should be notified about the transfer of the property to the trust.

**FIGURE 5.14**

**Affidavit of Citizenship**

STATE OF*
COUNTY OF*

**AFFIDAVIT**

The Undersigned, **FRED FLYER** ("Affiant"), of* County, Florida, being first duly sworn, do hereby depose and state, under penalty of perjury, the following:

1. Affiant is sui juris;

2. Affiant is Trustee of the FRED FLYER TRUST DATED MAY 1, 2003 (the "Trust");

3. Affiant is a citizen of the United States of America;

4. Each beneficiary under the Trust, including each person whose security interest in the aircraft is incorporated in the Trust, is a United States citizen.

FURTHER AFFIANT SAYETH NOT.

Dated this May 1, 2003.

**FRED FLYER,** Individually and as
Trustee of the Fred Flyer Trust Dated
May 1, 2003

**STATE OF***
**COUNTY OF***

The foregoing instrument was subscribed, sworn to, and acknowledged before me this May, 1, 2003, by **FRED FLYER,** who is personally known to me or who has produced sufficient identification and who did take an oath.

NOTARY PUBLIC

## FIGURE 5.15

### Letter to FAA Transmitting Transfer Documents

Federal Aviation Administration Aircraft Registry
Mike Monroney Aeronautical Center
P.O. Box 25504
Oklahoma City, OK 73125

RE: Aircraft Registration Application

Ladies and Gentlemen:

We represent Fred Flyer in connection with his estate planning. As part of his estate planning, Mr. Flyer has created the Fred Flyer Trust Dated May 1, 2003 (the "Trust"). Mr. Flyer wishes to transfer ownership of his aircraft, now individually owned by him, to himself as trustee of the Trust.

Enclosed are the following items:

1) Aircraft Bill of Sale;
2) Aircraft Registration Application (white and green copies);
3) Affidavit of citizenship of trustee and beneficiaries;
4) Certified copy of the Fred Flyer Trust Agreement Dated May 1, 2002; and
5) Check in the amount of $5.00, payable to Federal Aviation Administration.

Please issue a certificate of aircraft registration and return it to us at the above-referenced address.

Do not hesitate to contact me if you have any questions or require additional information to process the application. Thank you for your attention in this matter.

Yours very truly,

Abe Attorney

Enclosures

cc: Mr. Fred Flyer (without enclosures)

FIGURE 5.16

**Blanket Deed of Gift to Transfer Tangible Personal Property**

**DEED OF GIFT TO TRUSTEE**

The undersigned ("Grantors"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, convey to **JOE JONES AND JAN JONES, AS CO-TRUSTEES OF THE JONES FAMILY TRUST, DATED MAY 1, 2003** ("Trust"), the following property, to have and to hold with full power and authority to sell, encumber, lease or otherwise convey any interest therein:

> All tangible personal property owned by Grantors, including without limitation household furniture and furnishings, books, pictures, art objects, jewelry, hobby equipment and collections, wearing apparel, and other articles of household or personal use or ornament.

It is Grantors' intention that any tangible personal property acquired by Grantors subsequent to the date of this instrument is acquired by Grantors on behalf of the Trust and shall be deemed to be owned by the Trust, unless Grantors express otherwise in writing at the time of acquisition.

Grantors may retain possession or use of any item of tangible personal property conveyed hereunder. Such retention of possession or use of the property shall not be construed as a retention of ownership of the property by Grantors or as a reconveyance of title to Grantors from the Trust.

DATED this May 1, 2003.

WITNESSES:

_____ _____

**JOE JONES**

_____ _____

**JAN JONES**

_____

[NOTARY PROVISION]

FIGURE 5.17

## Deed of Gift to Transfer Specific Tangible Personal Property

**DEED OF GIFT TO TRUSTEE**

The undersigned ("Grantors"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, convey to **JOE JONES AND JAN JONES, AS CO-TRUSTEES OF THE JONES FAMILY TRUST DATED MAY 1, 2003** ("Trust"), the property described in Exhibit "A," to have and to hold with full power and authority to sell, encumber, lease or otherwise convey any interest therein.

Grantors may retain possession or use of any item of tangible personal property conveyed hereunder. Such retention of possession or use of the property shall not be construed as a retention of ownership of the property by Grantors or as a reconveyance of title to Grantors from the Trust.

DATED this May 1, 2003.

WITNESSES:

_____ _____

**JOE JONES**

_____

_____ _____

**JAN JONES**

_____

[NOTARY PROVISION]

**EXHIBIT "A"**

[Detailed description of particular asset or collection of assets.]

## C. BANK AND CREDIT UNION ACCOUNTS

### 1. Bank Accounts

Checking accounts, savings accounts, money market accounts, certificates of deposit, and similar accounts with financial institutions are typically retitled in the name of a revocable inter vivos trust by a transfer of ownership of the account rather than by opening a new account.[68] In many cases, the account is simply retitled, so that the account number remains the same and the existing checks remain valid. In some instances, however, the institution may require that the individually owned account be closed and a new account established in the name of the trustee. If an irrevocable life insurance trust will maintain a checking account for the payment of insurance premiums, a new account is opened in the name of the trustee of the trust.

Before retitling a certificate of deposit in the name of a trustee, the attorney should make sure that there will be no adverse consequences associated with the transfer, such as loss of interest or a prematurity withdrawal penalty.[69] The retitling of a certificate of deposit from the name of an individual to the name of the trustee of his or her revocable living trust should not bring about a penalty because the social security number remains the same. If, however, for some reason retitling a certificate of deposit would incur a penalty, the client may wait until the certificate of deposit matures and then title the replacement certificate in the name of the trust. During the interim period, the attorney may wish to consider assigning the certificate of deposit to the trustee and notifying the bank of the assignment.[70]

In the case of a transfer of ownership of a local account, the most common procedure is for the client who owns the account personally to go to the bank in order to sign the applicable documents. The client can be given a letter of instruction to present to the bank representative that will expressly state all the relevant information for the retitling of the account. A sample letter of instruction is set forth in Figure 5.18. The client should also take a copy of the signed trust agreement so that the bank representative can make copies of the relevant pages for the bank records. The bank representative will fill out the necessary forms and signature card, the client can sign them, and the change of ownership will be effective at that time. The retitling of the account should be reflected on the next statement. If the bank is not located in the local area, the retitling can be handled by mail. The attorney or client can call or write for the applicable forms and signature card, the bank can fax or send them, copies of the relevant pages of the trust agreement can be furnished, and the signed documents can be returned to the bank by mail. The USA Patriot Act (P.L. 107-56, §326[a]) requires financial institutions to verify the identity of persons seeking to open an account and to maintain records of the information used to verify a person's identity. So long as these provisions apply, banks' customer information programs may make it more difficult to retitle an account by mail.

Clients should be advised that it is not necessary for the checks associated with a bank account to reflect the trust ownership. For example, assume Joe and Jan Jones own a checking account and both their names appear on the checks. When the account is retitled in their names, as co-trustees of their trust, the bank records and the monthly statement will reflect the trust ownership. The checks, however, can remain in their personal names if they do not wish to reveal the existence of the trust to local tradespersons

FIGURE 5.18

**Letter of Instruction to Retitle Bank Account (Account Owner Is Trustee)**

**LETTER OF INSTRUCTION**

Local Bank
123 Main Street
Hometown, State 56789

RE: Joe and Jan Jones
Checking Account Number 12345
Money Market Account Number 34567

Ladies and Gentlemen:

Please transfer the ownership of the above-referenced accounts to our revocable trust as follows:

New Owner: **Joe Jones and Jan Jones as Co-Trustees of the Jones Family Trust Dated May 1, 2003**

Title of Trust: Jones Family Trust Dated May 1, 2003

Date of Trust: May 1, 2003

Address: 345 Residential Rd.
Hometown, State 56782

Social Security No.: 123-45-6789

If there are any questions about the change, please contact my attorney, Ann Attorney, at 345-6789.

Dated: May 1, 2003

_____

**Joe Jones**

_____

**Jan Jones**

and other payees. If the clients wish the checks to remain in their names personally, they should inform the bank representative at the time of the transfer. Otherwise, the bank may automatically generate new checks that reflect the trust ownership.

A client who is establishing a revocable living trust may own a checking or savings account in joint names with a relative, caretaker, or other person. For example, assume an elderly widower will establish a revocable living trust and name himself as trustee of the trust. The attorney discovers that the widower owns a checking account jointly with his daughter because the daughter sometimes handles transactions for him and it is convenient for her to have the ability to sign checks. Generally, the client must decide whether to transfer the account to the living trust or leave the account in the joint names. If the account is funded into the trust, the client as trustee will have the ability to sign checks. Generally, however, a bank will not allow a person who is not a trustee to sign checks when an account is owned by a trust.[71] Consequently, the flexibility previously offered by the joint ownership form will be forfeited. Because the relative or other person is a joint owner of the account, that person must consent to the transfer of the account ownership to the trust. Thus the letter of instruction that the client takes to the institution needs to be signed by both co-owners. A sample letter of instruction to retitle a joint account in the name of the trust of one of the joint owners is set forth in Figure 5.19. Before deciding to leave the account in joint names with his daughter, the client should be advised of the perils of joint ownership with children or others generally, including the fact that the daughter has access to all the funds in the account and that the account or part of the account could be considered her asset in the event of a divorce, bankruptcy, or lawsuit. Also, the client should understand that the balance in the account at his death will become the property of the daughter, absent an agreement or other clear manifestation of intent to the contrary.

The Federal Deposit Insurance Corporation (FDIC) provides deposit insurance for accounts in many banks and savings associations. An individual's funds deposited in an insured institution are aggregated and insured up to $100,000 in the aggregate.[72] Generally, funds in an account owned by a revocable living trust are aggregated with the settlor's individually owned accounts in applying the $100,000 limitation; however, an account in the name of a revocable living trust may be separately insured for each qualifying beneficiary who would become entitled to an interest in the trust upon the settlor's death.[73] Qualifying beneficiaries are limited to spouses, children, grandchildren, parents, and siblings.[74] To quality for per-beneficiary coverage, the account title at the bank must indicate that the account is held by a trust.[75]

### 2. Credit Union Accounts

A federal credit union is a nonprofit, cooperative membership organization that allows its members to save and borrow funds. Retitling an account with a credit union in the name of a trustee can be problematic because of the membership restrictions. Many credit unions, however, do recognize both revocable and irrevocable living trusts as members.

Credit unions that allow trusts to maintain accounts typically impose certain restrictions on membership and require specific information to be furnished in a particular format in order to create the trust account. Because the requirements are not standardized, the best approach is to contact the client's credit union and request

**FIGURE 5.19**

**Letter of Instruction to Retitle Bank Account**
**(One Account Owner Is Not Trustee)**

**LETTER OF INSTRUCTION**

Local Bank
123 Main Street
Hometown, State 56789

RE: Frank Father and Donna Daughter
Checking Account Number 12345

Ladies and Gentlemen:

We are the joint owners of the above-referenced account. Please transfer ownership of the account to Frank Father's revocable trust as follows:

| | |
|---|---|
| New Owner: | **Frank Father, Trustee of the Frank Father Trust Dated May 1, 2003** |
| Title of Trust: | Frank Father Trust Dated May 1, 2003 |
| Date of Trust: | May 1, 2003 |
| Address: | 345 Residential Rd.<br>Hometown, State 56782 |
| Social Security Number: | 123-45-6789 |

If there are any questions about the change, please contact Mr. Father's attorney, Ann Attorney, at 345-6789.

Dated: May 1, 2003

**Frank Father**

**Donna Daughter**

their restrictions and forms. Many credit unions require that the settlor of the trust be an individual member of the credit union before the trust account is created. As to the forms, any of the following, or any combination thereof, may be required: Financial Account Transfer; Notice of Revocable Trust; Indemnity and Hold Harmless Agreement; Application for Savings, Checking, or Money Market Fiduciary Accounts; Certificate of Trust; legal opinion that the trust is revocable or irrevocable under state law.

If the client's credit union does not allow an account to be titled in the name of a trust, the attorney should discuss with the client the options of closing the account and transferring the funds to an account that does permit trustee ownership or relying on a power of attorney, in the case of the client's incapacity, and the applicable state small estates procedure, in the case of death, to deal with the funds in the credit union account.

The National Credit Union Administration (NCUA) is the government agency that regulates, charters, and insures federal credit unions. Funds deposited in credit unions are insured by the NCUA's National Credit Union Share Insurance Fund (NCUSIF), a federal insurance program similar to the Federal Deposit Insurance Corporation for deposits in banks and savings associations. The NCUSIF insures share accounts in federal credit unions up to $100,000.[76] If an individual has more than one account in the same credit union, the accounts are aggregated in applying the $100,000 limitation.[77] Generally, funds in an account owned by a revocable living trust are aggregated with the settlor's individually owned accounts in applying the $100,000 limitation; however, an account in the name of a revocable living trust may be separately insured for each qualifying beneficiary if the requirements for a testamentary account, "Totten trust," or "payable-on-death" account are met and the trust document does not contain a defeating contingency relating to the qualifying beneficiary's interest.[78] Qualifying beneficiaries are limited to spouses, children, grandchildren, parents, and siblings.[79] A defeating contingency is a condition that would prevent a beneficiary from acquiring a vested and noncontingent interest in the funds upon the settlor's death.[80]

## D. UNITED STATES TREASURY SECURITIES

### 1. Savings Bonds

Ownership of United States savings bonds can be transferred to a revocable living trust by having the bonds reissued in the name of the trustee.[81] The transfer is accomplished by filing Department of the Treasury Bureau of Public Debt Form PD F 1851 E, titled "Request to Reissue United States Savings Bonds to a Personal Trust."[82] The form is used for all savings bonds, including Series EE, Series E, Series HH, Series H, and Series I. The bonds are described on Form PD F 1851 by issue date, face amount, bond number, and registration, which includes the names and social security numbers on the bonds.[83] The form provides space for thirteen bonds to be listed; additional bonds can be identified on Form PD F 3500 E, titled "Continuation Sheet for Listing Securities."[84] Alternatively, the bonds can be identified on an exhibit attached to Form PD F 1851. The signature of the bond owner must be certified by a financial institution or broker. The completed Form PD F 1851, together with the original bonds, are submitted to the nearest one of five Savings Bonds Processing Sites specified in the instructions to Form PD F 1851. Because the original bonds are enclosed, it is advisable to send the form by

registered mail or by certified mail and to request a return receipt. A sample completed Form PD F 1851 is set forth in Figure 5.20. Form PD F 3500 is reprinted in Figure 5.21. A sample transmittal letter for submitting Form PD F 1851 is set forth in Figure 5.22.

A few special circumstances concerning savings bonds should be noted. The bond should be reviewed to determine whether a "pay-on-death" (POD) beneficiary is indicated. The consent of a POD beneficiary is not required for Series EE or Series HH bonds; in the case of Series E or Series H bonds, however, the beneficiary named on the bond must sign the form. If a co-owner is deceased, proof of death must be submitted with Form PD F 1851. For example, assume a husband and wife were co-owners of a savings bond, the husband died, and the wife wishes to transfer the bond to her revocable inter vivos trust. A certified copy of the husband's death certificate should be furnished with the PD F 1851 requesting the transfer to her trust. If a savings bond is owned jointly by an adult and a minor child, the usual intent is that the bond is or will be a gift to the child and, therefore, the bond is not funded into the adult's revocable inter vivos trust. There may be occasions, however, in which such a bond would be properly funded into the adult's trust. The instructions to PD F 1851 state that the form should not be completed by any person under a legal disability, "except for a minor of sufficient competency to sign the request and to understand the nature of the transaction." Although signatures by certain minors may be acceptable to the Treasury Department, the prudent approach is to wait until the minor reaches the legal age of majority before transferring the jointly owned bond into a trust.

Series I bonds may be purchased in electronic form in a TreasuryDirect account through the Bureau of Public Debt of the Treasury Department. These accounts are limited to individual ownership; a trust account registration is not available.[85] Thus, if a client owns Series I bonds in a TreasuryDirect account, it is not possible to retitle the account in the name of a trustee. Similarly, it is not possible for a trustee directly to purchase Series I bonds in a TreasuryDirect account.

### 2. Treasury Bills

An individual may own United States Treasury bills in a TreasuryDirect account. The TreasuryDirect account may be retitled in the name of the trustee of a revocable living trust using Department of the Treasury Bureau of the Public Debt Form PD F 5178 E, entitled "Transaction Request."[86] In Part 2 of PD F 5178, the transaction requested should be marked as a name change so long as the taxpayer identification number on the account does not change.[87] The signature of the account owner must be certified by a financial institution or broker. The completed and certified Form PD F 5178 is submitted to the TreasuryDirect office indicated on the account statement. A sample completed Form PD F 5178 is set forth in Figure 5.23.

## E. INVESTMENT ACCOUNTS

Investment accounts, including brokerage accounts and mutual funds, can be transferred to a revocable living trust. The practices of brokers and mutual fund companies vary considerably as to the requirements for retitling an account in the name of a trustee. In many instances, a company will open a new account for the trust, transfer

# FIGURE 5.20

## Request to Reissue United States Savings Bonds to a Personal Trust (PD F 1851)

| For BPD or FRB use only:<br>Customer Name | Customer No. |
|---|---|

PDF 1851 E
Department of the Treasury
Bureau of the Public Debt
(Revised April 2003)

OMB No. 1535-0009

**REQUEST TO REISSUE UNITED STATES SAVINGS BONDS TO A PERSONAL TRUST**

IMPORTANT: Follow instructions in filling out this form. You should be aware that the making of any false, fictitious or fraudulent claim or statement to the United States is a crime punishable by imprisonment of not more than five years or a fine up to $250,000, or both, under 18 U.S.C. 287, 18 U.S.C. 1001, and 18 U.S.C. 3571. Additionally, 31 U.S.C. 3729 provides for civil penalties for the maker of a false or fraudulent claim to the United States of an amount not less than $5,000 and not more than $10,000, plus treble the amount of the Government's damages as an additional sanction.

PRINT IN INK OR TYPE ALL INFORMATION

**BEFORE COMPLETING THIS FORM**
**READ THE TAX LIABILITY NOTICE IN THE INSTRUCTIONS.**

1. I request reissue of the bonds described below, in the amount of $ 10,000 (face amount).

| ISSUE DATE | FACE AMOUNT | BOND NUMBER | REGISTRATION (Social security number and names, including middle names or initials, on the bonds) |
|---|---|---|---|
| 07-1992 | $10,000 | X601758HH | Cathy Client<br>123-45-6789 |
| | | | |
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*(If you need more space to describe your bonds, use a continuation sheet and attach it to the form.)*

2. What is the:

- grantor's name? * Cathy Client
- trustee's name? * Cathy Client
- date the trust was created? May 1, 2003
- taxpayer identification number assigned to the trust? 123-45-6789
- name of the beneficiary of the trust? * Cathy Client

* *If more than one grantor, trustee or beneficiary, list all.*

FIGURE 5.20 *Continued*

## Request to Reissue United States Savings Bonds to a Personal Trust (PD F 1851)

**3. Tax Liability**

You must check box a. or b. (See "*Tax Liability Notice*" in the Instructions.)
"*Interest*" includes tax-deferred interest represented by tax legends on HH/H bonds as well as interest earned on EE/E or I bonds from the issue date until the date of reissue.

*For Federal income tax purposes:*

a. ☒ I certify that I will be treated as owner of the portion of the trust represented by the tax-deferred accumulated interest on the bonds being reissued. *If this box is marked, the interest will be tax-deferred (interest will not be reported to the Internal Revenue Service as a result of the reissue)*

b. ☐ I certify that I will not be treated as owner of the portion of the trust represented by the tax-deferred accumulated interest on the bonds being reissued. *If this box is marked, interest will be reported to the Internal Revenue Service for the taxable year in which the bonds were reissued to the trust. A 1099-INT will be generated for the social security number specified*

**If b. is checked and the bonds are in coownership form (e.g., *"John Smith OR Jane Smith"*), complete the following:**

_____ _____
(Name of principal owner) (Social Security Number)

is the principal coowner of any bonds registered in coownership form submitted. He/She is responsible for any tax liability resulting from the reissue transaction requested. (A principal coowner is a coowner who (1) purchased the bonds with his/her own funds or (2) received them as a gift, inheritance or legacy, or as a result of judicial proceedings, and has them reissued in coownership form, provided he/she has received no contribution in money or money's worth for designating the other person as coowner on the bonds.

**The interest will be reported to the Internal Revenue Service, and a 1099 INT will be generated for the social security number specified above.**

**4. Registration for new bonds:** 123-45-6789
(Social Security Number or Employer Identification Number assigned to the trust)

Cathy Client Trustee, Cathy Client Revocable Trust, dtd 5-1-2003
(Name(s) of trustee(s), of grantor(s), and the date of trust's creation)

(Name(s) of trustee(s), of grantor(s), and the date of trust's creation)

**5. Delivery Instructions, if different from above:**

123 Flamingo Dr, Sunisland, FL 12345
(Address)

Cathy Client, c/o Any Attorney, PA
(Name)

2 Main Street
(Number and Street or Rural Route)

Sunisland, FL 12345
(City) (State) (ZIP Code)

**6.** Under penalty of perjury, I, the undersigned grantor (creator) of the trust, certify that the above taxpayer identification number assigned to the trust is correct. If Series HH/H bonds are involved, I certify that I am not subject to backup withholding either (i) because I have not been notified that I am subject to backup withholding (as a result of a failure to report all interest or dividends), or (ii) because I have been notified by the Internal Revenue Service that I am no longer subject to backup withholding. I further certify that the trust estate is not subject to backup withholding for one of the preceeding reasons. If the trust was created by some person other than the owner or coowners, the trustee must furnish an I.R.S. Form W-9. (See *HH Bonds Involved* in the Instructions.)

**Sign the form in ink in the presence of an authorized certifying officer.**

**Signature** X _____ Cathy Client
(Signature of Owner or Principal Coowner)) (Print Name)

**Home Address** 123 Flamingo Dr. 123-45-6789
(Number and Street or Rural Route) (Social Security Number)

Sunisland, FL 12345 321-654-9876
(City) (State) (ZIP Code) (Daytime Telephone Number)

**Signature** _____ _____
(Signature of Coowner or Beneficiary) (Print Name)

**Home Address** _____ _____
(Number and Street or Rural Route) (Social Security Number)

_____ _____ _____ _____
(City) (State) (ZIP Code) (Daytime Telephone Number)

FIGURE 5.20 *Continued*

## Request to Reissue United States Savings Bonds to a Personal Trust (PD F 1851)

**The certification portion must be completed.**

Subscribed and { sworn to / affirmed } before me this _____ day of _____ (Month) . _____ (Year) .

at _____ , County of _____ , State of _____

By said Cathy Cicot
(Name of person who signed the application in officer's presence)

whose identity is well-known or proved to me.

_____
(Signature and title of certifying officer)

(OFFICIAL STAMP OR SEAL)

_____
(Address)

Subscribed and { sworn to / affirmed } before me this _____ day of _____ (Month) . _____ (Year) .

at _____ , County of _____ , State of _____

By said _____
(Name of person who signed the application in officer's presence)

whose identity is well-known or proved to me.

_____
(Signature and title of certifying officer)

(OFFICIAL STAMP OR SEAL)

_____
(Address)

**RESERVED FOR IDENTIFICATION NOTATIONS**

☐ Customer Account Number and Date Established: _____

☐ Documents – Description _____

☐ Identified by (Signature and Address): _____

**FOR FEDERAL RESERVE BANK USE ONLY**

☐ This transaction was a reportable event. $ _____ was reported for _____ (Social Security Number) for _____ (Year)

☐ This transaction was not a reportable event. No interest was reported.

**NOTICE UNDER THE PRIVACY AND PAPERWORK REDUCTION ACTS**

The collection of the information you are requested to provide on this form is authorized by 31 U.S.C. Ch. 31 relating to the public debt of the United States. The furnishing of a social security number, if requested, is also required by Section 6109 of the Internal Revenue Code (26 U.S.C. 6109).

The purpose for requesting the information is to enable the Bureau of the Public Debt and its agents to issue securities, process transactions, make payments, identify owners and their accounts, and provide reports to the Internal Revenue Service. Furnishing the information is voluntary; however, without the information, Public Debt may be unable to process transactions.

Information concerning securities holdings and transactions is considered confidential under Treasury regulations (31 CFR, Part 323) and the Privacy Act. This information may be disclosed to a law enforcement agency for investigation purposes; courts and counsel for litigation purposes; others entitled to distribution or payment; agents and contractors to administer the public debt; agencies or entities for debt collection or to obtain current addresses for payment; agencies through approved computer matches; Congressional offices in response to an inquiry by the individual to whom the record pertains; as otherwise authorized by law or regulation.

We estimate it will take you about 15 minutes to complete this form. However, you are not required to provide the information requested unless a valid OMB control number is displayed on the form. Any comments or suggestions regarding this form should be sent to the Bureau of the Public Debt, Forms Management Officer, Parkersburg, WV 26106-1328. DO NOT SEND completed form to the above address; send to the correct address shown in the instructions.

(3)

# The Funding of Living Trusts

Carla Neeley Freitag

Section of Real Property, Probate and Trust Law

Defending Liberty
Pursuing Justice

FIGURE 5.20 *Continued*

## Request to Reissue United States Savings Bonds to a Personal Trust (PD F 1851)

**The certification portion must be completed.**

Subscribed and { sworn to / affirmed } before me this _____ day of _____ (Month), _____ (Year).

at _____, County of _____, State of _____

By said Cathy Cleat
(Name of person who signed the application in officer's presence)

_____

whose identity is well-known or proved to me.

_____
(Signature and title of certifying officer)

(OFFICIAL STAMP OR SEAL)

_____
(Address)

Subscribed and { sworn to / affirmed } before me this _____ day of _____ (Month), _____ (Year).

at _____, County of _____, State of _____

By said _____
(Name of person who signed the application in officer's presence)

_____

whose identity is well-known or proved to me.

_____
(Signature and title of certifying officer)

(OFFICIAL STAMP OR SEAL)

_____
(Address)

**RESERVED FOR IDENTIFICATION NOTATIONS**

☐ Customer Account Number and Date Established: _____

☐ Documents – Description _____

☐ Identified by (Signature and Address): _____

**FOR FEDERAL RESERVE BANK USE ONLY**

☐ This transaction was a reportable event. $_____ was reported for _____ (Social Security Number) for _____ (Year)

☐ This transaction was not a reportable event. No interest was reported.

**NOTICE UNDER THE PRIVACY AND PAPERWORK REDUCTION ACTS**

The collection of the information you are requested to provide on this form is authorized by 31 U.S.C. Ch. 31 relating to the public debt of the United States. The furnishing of a social security number, if requested, is also required by Section 6109 of the Internal Revenue Code (26 U.S.C. 6109).

The purpose for requesting the information is to enable the Bureau of the Public Debt and its agents to issue securities, process transactions, make payments, identify owners and their accounts, and provide reports to the Internal Revenue Service. Furnishing the information is voluntary; however, without the information, Public Debt may be unable to process transactions.

Information concerning securities holdings and transactions is considered confidential under Treasury regulations (31 CFR, Part 323) and the Privacy Act. This information may be disclosed to a law enforcement agency for investigation purposes; courts and counsel for litigation purposes; others entitled to distribution or payment; agents and contractors to administer the public debt; agencies or entities for debt collection or to obtain current addresses for payment; agencies through approved computer matches; Congressional offices in response to an inquiry by the individual to whom the record pertains; as otherwise authorized by law or regulation.

We estimate it will take you about 15 minutes to complete this form. However, you are not required to provide the information requested unless a valid OMB control number is displayed on the form. Any comments or suggestions regarding this form should be sent to the Bureau of the Public Debt, Forms Management Officer, Parkersburg, WV 26106-1328. DO NOT SEND completed form to the above address; send to the correct address shown in the instructions.

(3)

FIGURE 5.21

**Continuation Sheet for Listing Securities (PD F 3500)**

PD F 3500 E
Department of the Treasury
Bureau of the Public Debt
(Revised August 2001)

**CONTINUATION SHEET FOR LISTING SECURITIES**

**PRINT IN INK OR TYPE ALL INFORMATION**

The bonds described on this form are included in the attached PD F ______________________.

| ISSUE DATE | FACE AMOUNT | BOND NUMBER | INSCRIPTION (Social security number, names, including middle names or initials, and addresses on the bonds) |
|---|---|---|---|
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______________________________
Signature

## FIGURE 5.22

### Letter Transmitting Form PD F 1851

FRB of Richmond
P.O. Box 85053
Richmond, VA 23285-5053

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Cathy Client
Social Security Number 123-45-6789

Ladies and Gentlemen:

We represent Cathy Client in connection with her estate planning. Enclosed is your Request to Reissue United States Savings Bonds to a Personal Trust (PD F 1851) executed by Ms. Client requesting the one (1) bond described in Part 1 of the Form to be reissued in the name of "*Cathy Client, as Trustee of the Cathy Client Revocable Trust, Dated May 1, 2003.*" The original Series HH United States Savings Bond is also enclosed.

Please send the reissued original bond to the undersigned and we will forward them to our client. Thank you for your assistance with this matter.

Yours very truly,

Ann Attorney

Enclosures

cc: Ms. Cathy Client (without enclosures)

# FIGURE 5.23

## Transaction Request (PD F 5178)

PD F 5178 E
Department of the Treasury
Bureau of the Public Debt
(Revised June 2001)

www.treasurydirect.gov
1-800-722-2678

OMB No. 1535-0069

TREASURY DIRECT®

**TRANSACTION REQUEST**

SEE INSTRUCTIONS - TYPE OR PRINT IN INK ONLY - NO ALTERATIONS OR CORRECTIONS

**1. *TreasuryDirect* ACCOUNT INFORMATION**

*TreasuryDirect* ACCOUNT NUMBER 123 - 45 - 6789

ACCOUNT NAME
Cathy Client

FOR DEPARTMENT USE ONLY

DOCUMENT AUTHORITY

APPROVED BY

DATE APPROVED

**2. TRANSACTIONS REQUESTED** Check the box next to each transaction requested and print the information as it should appear on your *TreasuryDirect* account.

☒ NAME CHANGE (See NAME CHANGE under item 2 and CERTIFICATION, item 4, in the instructions.)
Cathy Client, Trustee of the Cathy Client Revocable Trust, Dated May 1, 2003

☐ ADDRESS CHANGE

City State ZIP Code

Need to Change Your Address or Telephone Number?
Try using our web services (www.treasurydirect.gov).

☐ TAXPAYER IDENTIFICATION NUMBER CHANGE (For correction only)

1st Named Owner _____ Social Security Number ____ – Employer Identification Number

☐ TELEPHONE NUMBER CHANGE

– Work OR Home

☐ PAYMENT INFORMATION CHANGE (Signature certification required, see item 4 in the instructions)

ROUTING NUMBER

FINANCIAL INSTITUTION NAME
(Limited to 30 characters/spaces)

NAME ON ACCOUNT
(Limited to 22 characters/spaces)

ACCOUNT NUMBER ☐ Checking ☐ Savings
(Check One)

☐ CONSOLIDATION OF *TreasuryDirect* ACCOUNTS

_____ – _____ – _____ _____ – _____ – _____
Closing *TreasuryDirect* Account Number(s)

_____ – _____ – _____
Surviving *TreasuryDirect* Account Number

_____ – _____ – _____ _____ – _____ – _____
Closing *TreasuryDirect* Account Number(s)

SEE INSTRUCTIONS FOR PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE.

(OVER)

FIGURE 5.23 *Continued*

## Transaction Request (PD F 5178)

***Did you add or delete a beneficiary or second owner?***
***Did you change your payment information?***
**If you answered "yes" to any of these questions, you must have your signature certified.**

**3. AUTHORIZATION** IF YOUR SIGNATURE REQUIRES CERTIFICATION YOU MUST WAIT UNTIL YOU ARE IN THE PRESENCE OF A CERTIFYING INDIVIDUAL TO SIGN THIS FORM. **If there are two owners joined by the word "and," both must sign, except for address and telephone number changes.**

I/We submit this request pursuant to the provisions of Department of the Treasury Circular, Public Debt Series No. 2-86 (31 CFR Part 357) and 1-93 (31 CFR Part 356). Under penalties of perjury, I/we certify that the information provided on this form is true, correct and complete.

FOR TAXPAYER IDENTIFICATION NUMBER CHANGES ONLY. Under penalties of perjury, I certify that:
1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.

X Trustee _____

Signature | Title (if appropriate) | Date

_____ _____ _____

Signature | Title (if appropriate) | Date

_____ _____

Address | Telephone (Daytime)

**4. CERTIFICATION** Your signature **MUST** be certified by an authorized certifying individual.

Instructions to Certifying Individual:
1. Names of person(s) who appeared and date of appearance **MUST** be completed.
2. Medallion stamps require an original signature.
3. Certification **CANNOT** be detached from this transaction request.

I certify that Cathy Client, whose identity(ies) is/are known or proven to me,
Name(s) of Person(s) Who Appeared

personally appeared before me this _____ day of _____ at _____
Month/Year City/State

and signed this request.

_____
Signature and Title of Certifying Individual

**ACCEPTABLE CERTIFICATIONS:**

1. Financial Institution's Seal or Stamp (Such as Corporate Seal, Signature Guaranteed Stamp, or Medallion Stamp). Brokers must use a Medallion Stamp.
2. Notary Public's Official Seal or Stamp. Certification by a Notary is ONLY acceptable for minor name corrections submitted without supporting evidence. (See NAME CHANGE Instructions.)

_____
Name of Financial Institution

_____
Address

_____
City/State/ZIP Code

_____
Telephone

My Commission Expires _____
(For notaries only)

**Certification by a Notary is ONLY acceptable for minor name corrections submitted without supporting evidence. (See NAME CHANGE Instructions.)**

the investments in the client's existing account to the newly opened trust account, and close the client's existing account. In some instances, the client's existing account can be retitled in the trustee's name. Most firms have their own forms; other companies require a letter of instruction from the settlor; and still other companies require a form to open a new account and a letter of instruction to transfer the existing account. Before preparing a letter of instruction to send to a brokerage firm or mutual fund company, it is advisable to call the company to inquire whether a special form is required.

The forms required to transfer a brokerage or mutual fund account to a trustee may be obtained by calling the company. Many companies permit the applicable forms to be downloaded from their websites; however, a call to the company may still be prudent to request any special instructions concerning the downloaded form. The forms are revised fairly frequently, so the attorney should take care to use the most current version. In some cases, a single form is used for individual, joint, corporate, trust, and all other types of accounts. Usually, this type of form will have a box to check to indicate a trust ownership. A sample completed example of this type of form is set forth in Figure 5.24. In other cases, a special form is provided to open an account in a trustee's name. A sample completed example of this type of form is set forth in Figure 5.25. Some firms have forms specifically tailored to transfer an investor's account to a revocable living trust. A sample completed example of this type of form is set forth in Figure 5.26. Note that the transfer application asks questions about the power of the trustee to delegate authority, to purchase and sell securities, to maintain a margin account, and to trade in options. If the client desires the margin account and options trading features, the attorney may want to conform the language of the powers clause in the trust to the wording of the application.

If a brokerage firm or mutual fund company requires a special form to transfer title to a trustee, there may be questions on the form that require the client's attention. Issues to be addressed may include: whether the trustee wishes check writing and debit or credit card privileges, whether the trustee will engage in margin trading, whether the trustee will trade in options, and whether Internet access to the account is desired. If the trustee desires to trade on margin or to trade options, the trust agreement must expressly authorize the trustee to engage in these activities. Special note should be taken of the required signature format, because many brokerage firms and mutual funds require a Medallion signature guarantee. If a company requests a copy of the trust agreement, the request can usually be satisfied by furnishing copies of the relevant pages from the document, including the pages with the name of the trust, the appointment of the trustees, the powers of the trustees, and the signatures.[88]

## F. PUBLICLY TRADED STOCKS, BONDS, AND UNIT TRUSTS

### 1. Stocks

If clients own stock in a publicly traded corporation and hold the stock certificates themselves, there are two basic options for retitling the stock in the name of a trustee.[89] The first option is to deposit the certificates with a broker and the second option is to contact the corporation's transfer agent directly and have the stock certificates reissued in the name of the trustee.

FIGURE 5.24

## General Form to Open New Account

PLEASE USE THIS NEW APPLICATION

FRANKLIN TEMPLETON INVESTMENTS

P.O. Box 997152, Sacramento, CA 95899-7152
P.O. Box 33030, St. Petersburg, FL 33733-8030
1-800/632-2301 franklintempleton.com

# Account Application

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT. To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. If you fail to provide all requested information, it may delay or prevent us from opening an account and making your requested investment(s), and if after your account is open we are unable to verify the information you provide, we may close your account.

PLEASE NOTE: You must provide your U.S. Taxpayer Identification Number (TIN); a TIN includes SSN, ITIN and EIN. If you have never been issued a U.S. TIN and are not a U.S. citizen, in place of a U.S. TIN please send us a copy of one of the following items: a resident-alien ID card, a current passport, a current foreign government-issued ID card, or other document evidencing nationality or residence that bears a photograph. If any document offered by non-U.S. persons is unfamiliar and cannot be authenticated by reasonable means, the account will not be opened. Refer to Section 5 for additional certification requirements applicable to each registered owner.

☐ Check this box and see Section 6 if you are using this application to make revisions to an existing account.

**1 REQUIRED REGISTRATION AND CUSTOMER IDENTIFICATION I RMATION (COMPLETE ONLY ONE TYPE)**

☐ **INDIVIDUAL OR JOINT ACCOUNT** (If more than one owner, "joint tenants with rights of survivorship" is assumed unless otherwise specified.)

First name _____ M.I. _____ Last name _____ Date of birth _____ SSN/TIN _____

Street address of residence (required) _____ City _____ State _____ ZIP _____

Mailing address (if different from above) _____ City _____ State _____ ZIP _____

( ) Daytime phone _____ ( ) Evening phone _____ ☐ U.S. citizen or resident alien ☐ Nonresident alien

Joint owner _____ Date of birth _____ SSN/TIN _____

Street address of residence (required) _____ City _____ State _____ ZIP _____

Mailing address (if different from above) _____ City _____ State _____ ZIP _____

( ) Daytime phone _____ ( ) Evening phone _____ ☐ U.S. citizen or resident alien ☐ Nonresident alien

*Attach separate sheets if more than two persons.*

OR

☐ **GIFTS/TRANSFERS TO A MINOR (UGMA/UTMA)**

Custodian's name (one custodian only) _____ Date of birth _____ SSN/TIN _____

Street address of residence (required) _____ City _____ State _____ ZIP _____

Mailing address (if different from above) _____ City _____ State _____ ZIP _____

( ) Daytime phone _____ ( ) Evening phone _____

as Custodian for _____ (Minor's name (one minor only)) _____ (Date of Birth) _____ (Minor's SSN/TIN) under the ___ (State) UGMA/UTMA

Street address of residence (required) _____ City _____ State _____ ZIP _____

Mailing address (if different from above) _____ City _____ State _____ ZIP _____

( ) Daytime phone _____ ( ) Evening phone _____

*(Please see next page for Trust, Corporation, Partnership, Retirement Plan* or Other Entity)*

FIGURE 5.24 *Continued*

## General Form to Open New Account

**1 REQUIRED REGISTRATION AND CUSTOMER IDENTIFICATION INFORMATION** (CONT)

☒ TRUST, ☐ CORPORATION, ☐ PARTNERSHIP, ☐ RETIREMENT PLAN* OR ☐ OTHER ENTITY

Please list all individuals who will have authority to open and/or transact business for this account on behalf of the legal entity in whose name this account will be registered and supply each individual's full Name, Date of Birth and personal Tax Identification Number (attach separate sheets if more than two persons). Please also enclose documents supporting: (A) existence of legal entity (e.g., articles of incorporation, business license, partnership agreement, trust instrument) and; (B) authority of each individual authorized to transact business on this account (e.g., corporate resolution, partnership certificate).

*ONLY USE this application if Franklin Templeton Bank & Trust, F.S.B. (FTB&T) **WILL NOT** be your trustee or custodian for your Traditional or Roth IRA, SEP IRA, or SIMPLE IRA. If FTB&T **IS** to be your trustee or custodian, call 1-800/527-2020. For outside custodial Business Retirement Plans or IRA Rollovers, call 1-800/818-4030.

Cathy Client, Trustee of the Cathy Client Revocable Trust, Dated May 1, 2003 — Name of Trust and Trust Date; OR Corporation; OR Partnership; OR Retirement Plan and Custodian; OR Other
123-45-6789 — Entity's TIN

123 Flamingo Dr. — Street address of entity (required)
City — City
ST — State
12345-6789 — ZIP

Mailing address of entity (if different from above)
City
State
ZIP

Cathy Client — Name of Trustee OR Authorized signer
06/15/1953 — Date of birth
123-45-6789 — SSN/TIN

Street address of Trustee OR Authorized signer (if different from above)
City
State
ZIP

(321) 654-9876 — Daytime phone
( ) — Evening phone

Name of Joint trustee OR Authorized signer (if different from above)
Date of birth
SSN/TIN

Street address of Joint trustee OR Authorized signer (if different from above)
City
State
ZIP

( ) — Daytime phone
( ) — Evening phone

**2 DIVIDEND AND CAPITAL GAINS DISTRIBUTION AND PAYMENT OPTIONS**

Please select one of the following options for your dividends and capital gains. All dividends and capital gains will be reinvested in additional shares of the same fund and class if you do not make a selection. **Check only one option for each.**

Dividends: ☒ Reinvest, ☐ Pay in cash, or ☐ Direct to my Franklin Templeton account number*_____

Capital Gains: ☒ Reinvest, ☐ Pay in cash, or ☐ Direct to my Franklin Templeton account number*_____

If you choose to have any dividends and capital gains paid in cash, please check one of the options below. If you do not make a selection, we will send them to you, by check, at your current address of record.

☐ Send dividends and capital gains to my bank account (complete Section 4G, Bank Information).

☐ Send dividends and capital gains to me at my current address of record.

☐ Send dividends and capital gains to an alternate person and/or address (complete Section 4F, Alternate Payee/Mailing Address).

*You may only reinvest distributions in the same class of shares, except that Class B and C distributions may be reinvested in Class A shares of any Franklin Money Fund.

**3 FUND SELECTIONS**

$1,000 Minimum initial investment per fund (unless otherwise noted in the applicable fund's prospectus), $100 minimum for Uniform Gifts or Transfers to Minors accounts, or $50 minimum if you have chosen to buy shares with an Automatic Investment Plan (complete Section 4D and 4G). Please choose from the funds listed below. If no class of shares is selected, Class A shares will be purchased. Please indicate the dollar amount of your investment(s) in the space provided and make your check payable to "Franklin Templeton Investments" or the name of the fund. If no dollar amount is indicated, payment by single check will be apportioned equally among all selected funds.

| INTERNATIONAL | Class A | Class B | Class C | Investment Amount |
|---|---|---|---|---|
| Templeton China World | ☐188 | ☐388 | ☐288 | $_____ |
| Templeton Developing Markets Trust | ☐711 | ☐991 | ☐791 | $_____ |
| Templeton Foreign | ☐104 | ☐304 | ☐204 | $_____ |
| Templeton Foreign Smaller Companies | ☐191 | ☐391 | ☐291 | $_____ |
| Templeton International (Ex EM) | ☐419 | | ☐519 | $_____ |
| Mutual European | ☐478 | ☐978 | ☐578 | $_____ |

| GLOBAL | Class A | Class B | Class C | Investment Amount |
|---|---|---|---|---|
| Franklin Global Aggressive Growth | ☐488 | ☐988 | ☐588 | $_____ |
| Franklin Global Growth | ☐487 | ☐987 | ☐587 | $_____ |
| Mutual Discovery | ☐477 | ☐977 | ☐577 | $_____ |
| Templeton Global Opportunities Trust | ☐415 | ☐915 | ☐515 | $_____ |
| Templeton Global Smaller Companies | ☐103 | ☐303 | ☐203 | $_____ |
| Templeton Growth | ☐301 | ☐301 | ☐201 | $_____ |
| Templeton World | ☐122 | ☐302 | ☐202 | $_____ |

FIGURE 5.24 *Continued*

## General Form to Open New Account

**3 FUND SELECTIONS** (CONT.)

| | Class A | Class B | Class C | Investment Amount |
|---|---|---|---|---|
| **GROWTH** | | | | |
| Franklin Aggressive Growth | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Capital Growth | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Flex Cap Growth | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Small-Mid Cap Growth | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| **VALUE** | | | | |
| Franklin Equity Income | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Large Cap Value | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin MicroCap Value | ☐[illegible] | | | $ |
| Franklin Small Cap Value | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Mutual Beacon | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Mutual Qualified | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Mutual Shares | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| **BLEND** | | | | |
| Franklin Blue Chip | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Convertible Securities | ☐[illegible] | | ☐[illegible] | $ |
| Franklin Growth | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Rising Dividends | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin U.S. Long-Short | ☐[illegible] | | | $ |
| **SECTOR** | | | | |
| Franklin Biotechnology Discovery | ☐[illegible] | | | $ |
| Franklin DynaTech | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Global Communications | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Global Health Care | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Gold and Precious Metals | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Natural Resources | ☐[illegible] | | | $ |
| Franklin Real Estate Securities | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Utilities | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Technology | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Mutual Financial Services | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| **ASSET ALLOCATION** | | | | |
| Franklin Templeton Conservative Allocation | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Templeton Founding Funds Allocation | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Templeton Conservative Target | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Templeton Moderate Target | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Templeton Growth Target | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| **INCOME** | | | | |
| Franklin Adjustable U.S. Government Securities | ☐[illegible] | | ☐[illegible] | $ |
| Franklin's Adjustable High Income | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Floating Rate Daily Access | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Income | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Short-Intermediate U.S. Government Securities | ☐[illegible] | | | $ |

| | Class A | Class B | Class C | Investment Amount |
|---|---|---|---|---|
| **INCOME** (CONT.) | | | | |
| Franklin Strategic Income | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin Strategic Mortgage Portfolio | ☐[illegible] | | | $ |
| Franklin Templeton Hard Currency | ☐[illegible] | | | $ |
| Franklin Total Return | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Franklin U.S. Government Securities | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Templeton Global Bond | ☐[illegible] | | ☐[illegible] | $ |
| **TAX-FREE INCOME** | | | | |
| Alabama | ☐[illegible] | | ☐[illegible] | $ |
| Arizona | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| California | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| California High Yield Municipal | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| California Insured | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| California Intermediate-Term | ☐[illegible] | | ☐[illegible] | $ |
| California Limited-Term | ☐[illegible] | | | $ |
| Colorado | ☐[illegible] | | ☐[illegible] | $ |
| Connecticut | ☐[illegible] | | ☐[illegible] | $ |
| Double | ☐[illegible] | | ☐[illegible] | $ |
| Federal | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Federal Intermediate-Term | ☐[illegible] | | ☐[illegible] | $ |
| Federal Limited-Term | ☐[illegible] | | | $ |
| Florida Insured | ☐[illegible] | | | $ |
| Florida | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Georgia | ☐[illegible] | | ☐[illegible] | $ |
| High Yield | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Insured | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Kentucky | ☐[illegible] | | | $ |
| Louisiana | ☐[illegible] | | ☐[illegible] | $ |
| Maryland | ☐[illegible] | | ☐[illegible] | $ |
| Massachusetts Insured | ☐[illegible] | | ☐[illegible] | $ |
| Michigan Insured | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Minnesota Insured | ☐[illegible] | | ☐[illegible] | $ |
| Missouri | ☐[illegible] | | ☐[illegible] | $ |
| New Jersey | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| New York | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| New York Insured | ☐[illegible] | | ☐[illegible] | $ |
| New York Intermediate-Term | ☐[illegible] | | ☐[illegible] | $ |
| New York Limited-Term | ☐[illegible] | | | $ |
| North Carolina | ☐[illegible] | | ☐[illegible] | $ |
| Ohio Insured | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Oregon | ☐[illegible] | | ☐[illegible] | $ |
| Pennsylvania | ☐[illegible] | ☐[illegible] | ☐[illegible] | $ |
| Tennessee Municipal Bond | ☐[illegible] | | | $ |
| Virginia | ☐[illegible] | | ☐[illegible] | $ |

**4 OPTIONAL SHAREHOLDER PRIVILEGES**

**A Letter of Intent for Class A Shares**

I intend to purchase additional shares issued by one or more Franklin Templeton Funds over a 13-month period following my initial purchase in order to be eligible for a sales charge discount on my purchase of Class A shares. I agree to the terms of the Letter of Intent described in the applicable prospectus(es) and grant Franklin Templeton Distributors, Inc. a security interest in the shares to be reserved. Although I am not obligated to do so, the aggregate amount of Franklin Templeton Funds' shares I intend to purchase over the 13-month period will be in an aggregate amount at least equal to ☐ $50,000* ☐ $100,000 ☐ $250,000 ☐ $500,000 ☐ $1,000,000

My account number(s) are: _____

*Not applicable for all funds.

(continued)

FIGURE 5.24 *Continued*

## General Form to Open New Account

### B Cumulative Quantity Discount for Class A Shares

I, and certain related parties, own shares of the Franklin Templeton Funds listed below and qualify for the discount in sales charges as described in the prospectus. My other account numbers are: _____

### C Telephone Transaction Privileges

You and your investment representative automatically have the convenience of Telephone Exchange and Redemption Privileges unless you check below. If bank information is provided in Section 4G, you and your investment representative have the convenience of Telephone Purchases and Redemptions via electronic funds transfer, unless you check below. Review your prospectus for a discussion of these privileges.

☐ I do NOT want Telephone Exchange Privileges.

☐ I do NOT want Telephone Redemption Privileges (if you decline this privilege, the Telephone Purchase Privilege will not be available).

☐ I do NOT want Telephone Purchase Privileges (if you decline this privilege and accept the Telephone Redemption Privilege, redemptions will only be available by check).

If you decline a particular telephone privilege, that privilege will also not be available to you online.

### D Automatic Investment Plan

Beginning the month of _____, please process automatic investment transfers directly from my bank account (complete Section 4G).

| Fund Name(s)* | Amount ($50 minimum per fund) | Frequency (select one) | Investment Date** (select one) |
|---|---|---|---|
| _____ | $_____ | ☐monthly ☐quarterly ☐annually | ☐1st ☐10th ☐20th ☐5th ☐15th ☐25th |
| _____ | $_____ | ☐monthly ☐quarterly ☐annually | ☐1st ☐10th ☐20th ☐5th ☐15th ☐25th |

*Please substitute Account Number if you wish to direct this to an existing account.
**If the Investment Date falls on a weekend or holiday, the transaction will be made on the following business day.

☐ Yes, send me information so that I can begin investing by Automatic Payroll Deduction.

☐ Yes, send me enrollment forms so that I can begin investing by Direct Deposit from my monthly social security check or other regularly occurring federal payment.

### E Systematic Withdrawal Plan

Beginning the month of _____, please begin systematic withdrawals from my fund account(s)* listed below.

| Fund Name(s)* | Amount ($50 minimum per fund) | Frequency (select one) | Withdrawal Date** (select one) |
|---|---|---|---|
| _____ | $_____ | ☐monthly ☐semiannually ☐quarterly ☐annually | ☐1st ☐10th ☐20th ☐5th ☐15th ☐25th |
| _____ | $_____ | ☐monthly ☐semiannually ☐quarterly ☐annually | ☐1st ☐10th ☐20th ☐5th ☐15th ☐25th |

*Minimum balance of $5,000 per account is required.
**If the Withdrawal Date falls on a weekend or holiday, the transaction will be made on the following business day. If you do not indicate a date, scheduled withdrawals will be made on the 20th of the month.

All payments will be sent to you, by check, at your current address of record if you do not select a payment option below.

☐ Send payments to me at my current address of record.

☐ Send payments to my bank account (complete Section 4G, Bank Information).

☐ Send payments to an alternate person and/or address (complete Section 4F, Alternate Payee/Mailing Address).

☐ Direct payments to my existing Franklin Templeton account number _____ (must be the same class as paying account).

### F Alternate Payee/Mailing Address

Please complete this information if you have requested that certain distributions or payments be sent to someone other than you and/or an address different than your address of record.

_____ _____ _____
Name Date of birth SSN/TIN

_____ _____ _____ _____
Street address of residence (required) City State ZIP

_____ _____ _____ _____
Mailing address (if different from above) City State ZIP

*(continued)*

FIGURE 5.24 *Continued*

## General Form to Open New Account

**G Bank Information**

Please provide your bank account information if you have requested any options for transfers directly to or from your bank account.

Bank name _____ Account number _____ ☐ Checking Account ☐ Savings Account

X _____ X _____

All bank account owners' signatures (if different from signatures in Section 5)

**IMPORTANT: Please tape a VOIDED check or savings account deposit slip imprinted with your name and address below.**

xxxx xxxxxxx
x xxx xxxx
xxxxxxxx xx xxxxx

XXXX

Date _____

Pay to the order of _____

Tape voided check or savings account deposit slip here as instructed in Section 4G. Please Do Not Staple.

_____ Dollars

For _____

xxxx xxxxx xx xx xxxxx xx xx

**5 SIGNATURE AND TAX CERTIFICATION – ALL REGISTERED OWNERS MUST SIGN APPLICATION**

**BY SIGNING BELOW I CERTIFY AND AGREE THAT:**

- The information provided on this application is true, correct and complete. You may verify this information with others, including third party credit reporting agencies and databases and U.S. and/or foreign government agencies, and if you are unable to verify my information, you are authorized to close my account by redeeming shares at the then applicable net asset value.
- I have received and read the prospectus for each fund selected in Section 3 and agree to the terms of each.
- I have full authority and am of legal age (or an emancipated minor) to buy and sell shares.
- The information in Sections 1, 2, 4F, 4G, and 5 applies to any new fund into which my shares may be exchanged.
- I consent to the recording of our telephone conversations when I call you regarding my shares and account(s).
- If I request transfers to or from my bank account in this application or at any time, including by telephone, electronically or otherwise, you are authorized to make those requested transfers (and to make, if necessary, adjusting transfers if any amounts are transferred in error). If my bank is not an ACH member bank, you are authorized to make those transfers by presenting drafts drawn against my bank checking account that you may sign for me on my behalf. I understand that I can end this authorization at any time by sending you written notice.
- You are authorized to provide any information about my account(s) to my dealer or other financial advisor.
- I will review all statements upon receipt at the address of record, and will notify you immediately if there is a discrepancy.

I understand that mutual fund shares are not deposits or obligations of, or guaranteed or endorsed by, any bank, and are not federally insured by the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other agency of the U.S. Government, and that an investment in mutual fund shares involves risks, including the possible loss of principal.

***Failure to provide a correct Taxpayer Identification Number (TIN) with this application, or within 60 days if you have applied for a TIN, will result in backup withholding.***

**I certify, under penalty of perjury, that:**

1. **the TIN provided in this application is my correct TIN (or I am waiting for a TIN to be issued to me [a copy of my application for a TIN is attached]), and**
2. **I am NOT subject to backup withholding[1], and**
   *Cross out item 2 if you are subject to backup withholding.*
3. **I am a U.S. person (including a U.S. resident alien).**
   *Cross out the entire tax certification if you are NOT a U.S. person. You cannot use this form. Please call Franklin Templeton Shareholder Services at 1-800-632-2301 (from outside the U.S., you may call COLLECT, 650/312-2000) for the correct tax certification form, and sign the rest of the application below.*

**Check as appropriate:**

☐ I have applied for a TIN and a copy of that application is attached.

☐ I am an exempt recipient as defined under IRS regulations (e.g.: a corporation, financial institution, registered broker/dealer, tax-exempt organization, not-for-profit entity or IRA).

**The IRS does not require your consent to any provision of this document other than the certification required to avoid backup withholding.**

X _____ 05/01/03
Authorized Signature Date

X _____
Authorized Signature Date

X _____
Authorized Signature Date

X _____
Authorized Signature Date

I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding.

FIGURE 5.24 *Continued*

## General Form to Open New Account

**6 ACCOUNT REVISION** (IF APPLICABLE)

If you are using this form to revise any information, instructions, elections or options on any existing account, please list each account number below, and make the revisions in the appropriate sections. Each registered owner on the account(s) must sign below.

Account number(s)

X
Signature(s) of registered account owners

X

X

X

Signature guarantee stamp (if you are changing the registration or requesting distributions and/or redemptions be sent to a new address, different person or bank account with no common owners to your Franklin Templeton account, each registered owner's signature must be guaranteed by an eligible guarantor institution).

NOTE: For any change in registration, please send us any outstanding certificates by registered mail.

**7 BROKER/DEALER USE ONLY** PLEASE PRINT

This application for the purchase of shares complies with the terms of our selling agreement with Franklin/Templeton Distributors, Inc. ("Distributors") and with the current prospectus(es) for the fund(s) identified in Section 3, Fund Selections. We agree to notify Distributors of any purchases of shares which may be eligible for reduced or eliminated charges.

WIRE ORDERS ONLY: The attached check for $ _____ should be applied against wire order control number _____ dated _____ for _____ shares.

Securities Dealer name

Main Office address

Branch# _____ Rep# _____ Representative name: _____

Branch address

( ) _____
Telephone number

Authorized signature, Securities Dealer

Title

Franklin Templeton Use Only

Franklin Templeton Dealer# ☐☐☐☐☐ Branch# ☐☐☐☐☐☐☐☐ Rep# ☐☐☐☐☐☐☐☐☐

GOF WAPP 12/03

FIGURE 5.25

**Form to Open New Account in Name of Trustee**

JANUS

PO Box 173375 • Denver, CO 80217-3375
www.janus.com

**In a Hurry to Set-up Your Account?**
fax form to (877)319-3852

# Trust Account Application

- Use this form to establish a trust account at Janus.
- Questions? Call (800)525-3713.
- Please print in capital letters using black ink.
- **Important Note:** To help the government deter terrorism funding and money laundering activities, all financial institutions are now required to obtain, verify and record information that identifies each person who opens an account. Please read important disclosure in Section 5.
- Trust must be established and located in the US to open a Janus account.

## 1. Account Information

Name of Trust *A copy of the trust document or the first & last pages and the pages identifying the successor trustees of the trust must be provided.

CATH4 CLIENT REVOCABLE TRUST

Date Trust was Established: 05-01-2003 | Trust's Social Security Number: 123-45-6789 | or Trust's Taxpayer Identification Number:

**Name of Trustee(s)**

Name: CATH4 | Middle Initial: | Last Name: CLIENT

Social Security Number: 123-45-6789 | Date of Birth: 04-01-1952

**Mailing Address** (If you provide a PO Box, you must fill out Physical Address below)

Street Number or PO Box: 123 | Street Name: FLAMINGO DR

Apartment Number: | City: CITY | State: ST | ZIP: 12345

Preferred Phone Number (Required): 321-654-9876 | Additional Phone Number (Optional): - -

**Physical Address** (Required, if different from above. No PO Boxes)

Street Number: | Street Name:

Apartment Number: | City: | State: | ZIP:

**Name of Trustee(s)**

Name: | Middle Initial: | Last Name:

Social Security Number: - - | Date of Birth: - -

**Mailing Address** (If you provide a PO Box, you must fill out Physical Address below)

Street Number or PO Box: | Street Name:

Apartment Number: | City: | State: | ZIP:

Preferred Phone Number (Required): - - | Additional Phone Number (Optional): - -

Continued on Next Page

FIGURE 5.25 *Continued*

## Form to Open New Account in Name of Trustee

**Physical Address** (Required, if different from above. No PO Boxes)

Street Number | Street Name

Apartment Number | City | State | ZIP

**2. What Janus funds would you like to own?** (The minimum initial investment is $2,500 per fund)

**Growth Funds**

Janus Fund – 42 $

Janus Enterprise Fund – 50 $

Janus Mercury Fund – 48 $

Janus Olympus Fund – 56 $

Janus Orion Fund – 62 $

**International/Global Funds**

Janus Global Life Sciences Fund* – 59 $

Janus Global Technology Fund* – 60 $

Janus Global Opportunities Fund* – 64 $

Janus Worldwide Fund* – 41 $

Janus Overseas Fund* – 54 $

Janus International Equity Fund*† – 72 $

**Core Funds**

Janus Balanced Fund – 51 $

Janus Core Equity Fund – 55 $

Janus Growth and Income Fund – 40 $

Janus Special Equity Fund – 61 $

**Risk-Managed Funds**

Janus Risk-Managed Stock Fund* – 70 $

**Value Funds**

Janus Mid Cap Value Fund – I Shares – 67 $

Janus US Value Fund† – 71 $

**Income Funds**

Janus Federal Tax-Exempt Fund – 53 $

Janus Flexible Income Fund – 49 $

Janus High-Yield Fund* – 57 $

Janus Short-Term Bond Fund – 52 $

**Money Market Funds**

Janus Money Market Fund – 37 $

Janus Government Money Market Fund – 38 $

Janus Tax-Exempt Money Market Fund – 39 $

*This fund has a 1% redemption fee on shares sold within 3 months of purchase. Please refer to the Fund's prospectus for more details.

†Per the prospectus, the legal names of Janus U.S. Value Fund and Janus International Equity Fund are Janus Adviser U.S. Value Fund - Investor Shares and Janus Adviser International Equity Fund - Investor Shares, respectively.

**3. Automatic Monthly Investment Selections** ($100 minimum per fund.)

Automatic Monthly Investment: This option allows you to make automatic monthly investments ($100 minimum purchase per fund) into your Janus account directly from your bank account. To establish a new account with this program, you must initially invest at least $2,500 per fund, and subsequent monthly investments must be at least $100 per fund. Please complete section below.

| Fund Name | Amount | Withdrawal date(s)* |
|---|---|---|
| | $ | – – |
| | $ | – – |
| | $ | – – |
| | $ | – – |

*If no date or dollar amount is specified, investments of $100 will be made on the 20th of each month.

**Continued on Next Page**

FIGURE 5.25 *Continued*

## Form to Open New Account in Name of Trustee

**What bank will you be using for the options you have selected?**

By signing below or section 5 of this application, I authorize credits/debits to/from this bank account in conjunction with the account options selected. I agree that Janus will be fully protected in honoring any such transaction. I also agree that Janus may make additional attempts to debit/credit this account if the initial attempt fails and that I will be liable for any associated costs. All account options selected will become part of the terms, representations and conditions of this application.

Signature(s) of depositor (if different from signature in section 6)

This is a: Checking Account Savings Account (Please attach a voided check or deposit slip)*

Name of bank or financial institution

Name(s) on Bank Account

ABA Routing Number (First nine digits at bottom left on check) Account Number

* When provided, information from voided check or deposit slip takes precedence.

**4. How would you like to make your initial Janus fund purchase? (must select one)**

Electronically - Make a one-time withdrawal from the above bank account for the amount indicated in Section 2.

Check - Please make your check payable to Janus and enclose it with your completed application.

**5. Please read and sign below.**

**By signing below:**

- I certify that I have received and read the current prospectus of the Fund(s) in which I am investing. I certify that I have the authority and legal capacity to make this purchase and that I am of legal age in my state of residence.
- I agree to read the prospectus for any Janus fund(s) into which I may request an exchange in the future. I understand that the terms, representations and conditions in this application and the prospectus, as amended from time to time, will apply to this account and any account established at a later date.
- I authorize the Fund and its agents to act upon instructions (by phone, in writing, online or by other means) believed to be genuine and in accordance with procedures described in the prospectus for this account or any account into which exchanges are made. I agree that neither the Funds nor the transfer agent will be liable for any loss, cost or expense for acting on such instructions, provided the Fund employs reasonable procedures to confirm that instructions communicated are genuine. I understand that anyone who can properly identify my account(s) may be able to make telephone transactions on my behalf.
- I also authorize the Fund and its agents to reinvest all income dividends and capital gains distributions.
- I consent to the 'householded' delivery of any fund prospectuses, shareholder reports or other documents (except transaction confirmations and account statements) that I am required, by law, to receive. This means Janus will generally deliver a single copy of most annual and semi-annual reports, prospectuses, and newsletters to investors who share an address, even if the accounts are registered under different names. My participation in this program will continue indefinitely unless I contact Janus.
- **Important Note:** To help the government deter terrorism funding and money laundering activities, all financial institutions are now required to obtain, verify and record information that identifies each person who opens an account. So that we may comply with these requirements, we ask you to please complete Section 1 in its entirety when opening an account with Janus. The omission of this information will result in the return of your application and investment. Please note that your ability to perform transactions in your account may also be affected or otherwise delayed if Janus cannot easily verify the accuracy of the required information in Section 1. If, after 15 days, Janus is still unable to verify the required information, your account may be closed and your shares redeemed at the next available NAV.

**Under penalty of perjury, I certify that:**

1. The Taxpayer Identification Number or Social Security Number shown on this application is correct.
2. The entity is not subject to backup withholding because: (a) the entity is exempt from backup withholding; or (b) the entity has not been notified by the Internal Revenue Service (IRS) that the entity is subject to backup withholding as a result of a failure to report all interest or dividends; or (c) the IRS has notified me that the entity is no longer subject to backup withholding. Cross out item 2 if the entity has been notified by the IRS that The entity is currently subject to backup withholding.
3. The entity is a US Trust.

**The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.**

Trustee Signature — Date

X Cathy Client, Trustee of the Cathy Client Revocable Trust, dated 5-1-2003 — 5-1-2003

Additional Trustee Signature (if applicable) — Date

Additional Trustee Signature (if applicable) — Date

## FIGURE 5.26

### Form to Transfer Account from Individual to Trustee

# Open a Schwab One® Trust Account Today

charles SCHWAB

www.schwab.com
1-800-435-4000 (inside the U.S.)
+1-602-355-7300 (outside the U.S.)


- To open a Schwab One Trust Account, the Trust document must state that Trustee(s) is/are allowed to invest and reinvest in securities without restriction.
- All sections of this form (Sections 1–9) must be completed.
- Sign the completed application and have it notarized, as applicable.
- Minimum $10,000 requirement to open account.
- If converting from an existing Schwab account, the minimum deposit rule does not apply; however, account service fees still apply.

## 1. Establish Your Schwab One Trust Account

Complete this section to indicate whether you are opening a new Trust account, converting an existing account to a Trust account or making changes to an existing Trust account.

**Check one:**

☐ **Open** a new Schwab One Trust Account (without converting an existing Schwab account)—complete Sections 1–9.

☒ **Convert** a Schwab or Schwab One account to a Schwab One Trust Account:

Write the account number here | Account Number | 1 | 2 | 3 | 4 | – | 5 | 6 | 7 | 8 | and complete Sections 1, 3–9.

An account may be converted to a Trust account if all the current account holders are also the Trustees. Alternatively, all the current account holders may request in writing that the account be converted to a Trust and that the same account number be used for the Trust account. The instructions must also state which parties will be Trustees of the Trust and must be signed by all current account holders.

☐ **Change Trustees and/or Update the Trust Information** on an existing Schwab Trust account or Schwab One Trust Account:

Write the account number here | Account Number | | | | | – | | | | | , complete Sections 1, 3–9 **and check ANY box to indicate which applies to you:**

- ☐ Removing one or more Trustee(s) and not replacing Trustee(s)
- ☐ Adding one or more Trustee(s) to the existing Trustee(s) without removing Trustee(s)
- ☐ Removing one or more Trustee(s) and adding one or more Trustee(s)

**and/or**

- ☐ Updating the Trust information

**Note:** Additional documentation may be required when removing Trustees. Contact Schwab for more information.

## 2. Funding and Account Handling Instructions

A minimum deposit of $10,000 in cash and/or securities is required to open your Schwab One Trust account. Indicate the amount and type of deposit below.

**Note:** You do not have to complete this section if you are converting an existing account.

**Initial Deposit** $

**Type of Deposit**

- ☐ Check or money order enclosed.
- ☐ Security certificates enclosed. To avoid any delays, please check with an Investment Consultant to see if there are additional requirements.
- ☐ Transfer of Account Form enclosed.
- ☐ Transfer funds from another Schwab account.

Account Number | | | | | – | | | | |

Include a Letter of Authorization signed by the account holder(s) to transfer funds from the other Schwab account.

Quarterly account service fees apply if your household balance is below $50,000 in a given calendar quarter: $45 for balances below $10,000, and $30 for balances between $10,000 and $50,000. Certain waivers may apply.

**Account Handling:** For your convenience, Schwab will automatically hold all of your securities purchased, sale proceeds, dividends and interest. We'll also release your name, address and securities positions to companies in which we hold securities for your account if they request this information, unless you notify us otherwise in writing. Security certificates may be registered and shipped to you. However, a fee is charged for each certificate. Contact us for further information.

(Continued on page 2)

**FOR CHARLES SCHWAB USE ONLY:**

Branch Office and Account Number | | | – | | | | | – | | | | |

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0 3 4 2 0 1

FIGURE 5.26 *Continued*

## Form to Transfer Account from Individual to Trustee



**3. Trust Information**

We respect your privacy. Schwab will use the information you provide to open and service your accounts, communicate with you, and provide information about products and services. Read about Schwab's privacy policy at www.schwab.com/privacy.

**Indicate the Type of Trust:**

☒ **Revocable Living Trust where the Trustor(s), Trustee(s) and Current Beneficiary(ies) are all the same individual(s)**

☐ **Other Revocable Living Trust** ☐ **Irrevocable Living Trust** ☐ **Testamentary Trust** ☐ **Business Trust** ☐ **Offshore (Non-U.S.) Trust**

| Trust Name (Decedent's name if a Testamentary Trust) | Date of Trust |
|---|---|
| Cathy Client, Trustee of the Cathy Client Revocable Trust | 05-01-2003 |
| Trust Tax ID Number (If Revocable Living Trust, use Grantor's Social Security Number) | By Whom, If Anyone, Is It Revocable and Amendable? |
| 123-45-6789 | Cathy Client, Settlor |
| Trustee/Grantor/Settlor Name | This Trust Is Governed by the Laws of the State of |
| Cathy Client | ST |
| Trustee/Grantor/Settlor Citizenship (Mark one or all) ☒ USA ☐ Other _____ ☐ Other _____ | Trustee/Grantor/Settlor Country of Legal Residence ☒ USA ☐ Other: _____ |
| Has the Original Trust Agreement Been Amended or Restated? ☐ Yes ☒ No | Date(s) of Amendment(s)/Date(s) of Restatement(s) |
| Trust Mailing Address 123 Flamingo Dr. | City, State, Zip Code City, State 12345 |
| List All Publicly Traded Companies in Which the Trust Is a 10% Shareholder N/A | |

All statements and account-related correspondence will be mailed to the address listed above. If you would like duplicate statements mailed to other parties, include a letter with mailing instructions.

**4. Powers of the Trustees**

**Note: These questions refer to those powers which have been granted to the Trustee(s) in the Trust document, not whether the Trustee(s) currently desire(s) these features. If the following questions are not answered "yes" or "no," we will presume that the Trustee(s) do not have these powers.**

(a) By signing the Certification contained in Section 8, the Trustees hereby certify that Schwab is authorized to follow the instructions of any Trustee authorized to act on this account and to deliver funds, securities or any other assets in the brokerage account to any such Trustee or on any such Trustee's instructions, on the presumption that either (1) the Trust Agreement expressly provides that such Trustee is authorized to act individually, independently and without the consent of the other Trustees for all purposes related to the Trust brokerage account with Schwab, or (2) if the Trust Agreement does not contain such an express provision, the Trustee so acting has obtained the requisite consent of the other Trustees in accordance with the requirements of the Trust Agreement. **Print the names of ALL current Trustees listed in the Trust Agreement here.**

Cathy Client
Name of Trustee

_____
Name of Co-Trustee

_____
Name of Co-Trustee

_____
Name of Co-Trustee

(b) Does the Trust Agreement or applicable state law grant the Trustee(s) the power to delegate to others (such as a financial advisor) the authority to give trading instructions with respect to the Trust's brokerage account with Charles Schwab & Co., Inc.?

☒ Yes ☐ No

**Additional documents are required to add someone as a Power of Attorney. See the instructions page for more information.**

(c) The undersigned Trustees certify that we have the power under the Trust Agreement to enter into transactions for the purchase and sale of securities and other investments, including, without limitation, stocks (preferred or common), bonds, mutual funds and certificates of deposit.

In addition to the foregoing powers, by indicating "yes" where applicable below, the Trustees hereby certify that the Trust Agreement also specifically authorizes the Trustees:

(i) to maintain a Margin and Short Account and through such account to purchase securities on margin, sell securities that the Trust does not own (i.e., short sales) and borrow securities in connection therewith; to borrow money; to secure the performance of the Trust's obligations to the accounts; and to grant authority to the brokerage firm, acting as principal or otherwise, to pledge, repledge, hypothecate or rehypothecate assets of the Trust.

☒ Yes ☐ No

If yes, specify the section/paragraph of the Trust Agreement:
VII-A-4

(ii) to trade in all types of options, including, without limitation, the purchase of puts and calls and the writing (sale) of covered and uncovered puts and calls.

☒ Yes ☐ No

If yes, specify the section/paragraph of the Trust Agreement:
VII-A-4

**Certain financial and experiential requirements must be met to trade options through Schwab, and a separate Option Application must be completed.**

(Continued on page 3)

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## FIGURE 5.26 *Continued*

# Form to Transfer Account from Individual to Trustee



**5. Trustee Information**

All Trustees who are to conduct business in the account must provide this information. As required by federal law, Schwab will use the information provided below to verify your identity.

**Trustee**

☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss ☐ Dr.

| Name (First) | (Middle) | (Last) |
|---|---|---|
| Cathy | | Client |

Home Street Address (no P.O. boxes): 123 Flamingo Dr.

City, State, Zip Code: City, State 12345

Mailing Address (if different from above; P.O. boxes may be used):

| Home Telephone Number | Business Telephone Number |
|---|---|
| (321) 654-9876 | ( ) |

Email Address* (See Section 7, Enrollment for Electronic Trade Confirmations.)

| Social Security/Tax ID No. | Passport Country of Issue | Passport No. (if not a U.S. citizen) |
|---|---|---|
| 123-45-6789 | | |

| Date of Birth (mm/dd/yyyy) | Mother's Maiden Name |
|---|---|
| 04/01/1952 | Jones |
| **Driver's License Number, State** | **Are you known by another name? Specify:** |
| ST 556677788 | NO |

Country(ies) of Citizenship (Must list all): ☒ USA ☐ Other: _____ ☐ Other: _____

Country of Legal Residence: ☒ USA ☐ Other: _____

Securities industry regulations require that we collect the following information:

Check only one: ☐ Employed ☒ Self-employed ☐ Retired ☐ Student ☐ Not employed

| Employer | Industry | Occupation/Position |
|---|---|---|
| Self | | Artist |

| Business Street Address | City, State, Zip Code |
|---|---|
| 123 Flamingo Dr. | City, ST 12345 |

List any securities firm(s) you are employed by or in which you are a director or owner:* Specify: N/A

List all publicly traded companies in which you are a director, 10% shareholder or policy-making officer. Specify: N/A

| Marital Status | Number of Dependents |
|---|---|
| ☒ Single ☐ Married ☐ Divorced | 0 |

**Co-Trustee** (Attach additional sheets if necessary.)

☐ Mr. ☐ Mrs. ☐ Ms. ☐ Miss ☐ Dr.

| Name (First) | (Middle) | (Last) |
|---|---|---|
| | | |

Home Street Address (no P.O. boxes):

City, State, Zip Code:

Mailing Address (if different from above; P.O. boxes may be used):

| Home Telephone Number | Business Telephone Number |
|---|---|
| ( ) | ( ) |

Email Address* (See Section 7, Enrollment for Electronic Trade Confirmations.)

| Social Security/Tax ID No. | Passport Country of Issue | Passport No. (if not a U.S. citizen) |
|---|---|---|
| | | |

| Date of Birth (mm/dd/yyyy) | Mother's Maiden Name |
|---|---|
| | |
| **Driver's License Number, State** | **Are you known by another name? Specify:** |
| | |

Country(ies) of Citizenship (Must list all): ☐ USA ☐ Other: _____ ☐ Other: _____

Country of Legal Residence: ☐ USA ☐ Other: _____

Securities industry regulations require that we collect the following information:

Check only one: ☐ Employed ☐ Self-employed ☐ Retired ☐ Student ☐ Not employed

| Employer | Industry | Occupation/Position |
|---|---|---|
| | | |

| Business Street Address | City, State, Zip Code |
|---|---|
| | |

List any securities firm(s) you are employed by or in which you are a director or owner:* Specify:

List all publicly traded companies in which you are a director, 10% shareholder or policy-making officer. Specify:

| Marital Status | Number of Dependents |
|---|---|
| ☐ Single ☐ Married ☐ Divorced | |

*Collect and attach all of the information listed in the "Co-Trustee" section above for each additional Trustee who is to conduct business in the account.

*By providing your email address, you consent to receiving email from Schwab. Information about opting out of certain email communications is provided at www.schwab.com/privacy.

*Attach a Rule 407 letter from your employer if employed by a securities firm.

**6. Provide Information About the Trust's Financial Profile**

Securities industry regulations require that we collect this information. All Trustee(s) conducting business in the account must provide this information.

**Trustee's Investment Knowledge:**

| Trustee | Co-Trustee |
|---|---|
| ☐ | ☐ None |
| ☐ | ☐ Limited |
| ☒ | ☐ Good |
| ☐ | ☐ Extensive |

**Trustee's Investment Experience:**

| Trustee | Co-Trustee |
|---|---|
| ☐ | ☐ None |
| ☐ | ☐ Limited |
| ☒ | ☐ Good |
| ☐ | ☐ Extensive |

**Trust's Federal Income Tax Bracket:**

☐ 10% ☐ 35%
☐ 15% ☐ 38.6%
☐ 27% ☐ Other: _____
☒ 30%

**Trust's Annual Income:**

☐ Under $15,000
☐ $15,000–$24,999
☐ $25,000–$49,999
☐ $50,000–$99,999
☒ $100,000 or More

**Trust's Liquid Net Worth:**

☐ Under $25,000
☐ $25,000–$49,999
☐ $50,000–$99,999
☐ $100,000–$249,999
☒ $250,000 or More
Specify: _____

**Trust's Overall Investment Objective†:**

☐ Capital Preservation
☐ Income
☒ Growth
☐ Speculation

†**Investment Objective Definitions: Capital Preservation:** The objective of capital preservation is to protect your initial investment by choosing investments that minimize the potential of any loss of principal. The long-term risk of capital preservation is that the returns may not be adequate to offset inflation. **Income:** The primary objective of an income strategy is to provide current income rather than long-term growth of principal. **Growth:** The objective of a growth strategy is to increase the value of your investment over time while recognizing a high likelihood of volatility. **Speculation:** A speculator's objective is to assume a higher risk of loss in anticipation of potentially higher-than-average gain by taking advantage of expected price changes.

(Continued on page 4.)

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FIGURE 5.26 *Continued*

## Form to Transfer Account from Individual to Trustee



**7. Select Your Schwab One® Trust Account Features**

**Choose Your Cash Feature**

Please select below an eligible Cash Feature that may allow you to earn income on the free credit balances in your brokerage account (each a "Cash Feature"). For additional information on the eligibility rules for, and important disclosures about, the various alternatives to earn income on your cash, please see Schwab's cash feature disclosure statement. If you are changing the registration of your existing Schwab account to the name of a trust, please note that the Bank Deposit feature is not available for the Schwab One Trust Account. You must select another eligible Cash Feature from the choices below. If you do not select a Cash Feature or you select a Cash Feature for which you are not eligible, you instruct Schwab to designate the Schwab One Interest feature as the Cash Feature for your account. Schwab may make this designation without providing any advance notice to you.

Select only **one** of the following Cash Features for your account:

**Taxable Income**

☐ Schwab One Interest

**Schwab Taxable Money Fund Sweep Shares**

(Available only to clients with household assets of $100,000 or more)

☐ Schwab Money Market Fund

☐ Schwab Government Money Fund

☐ Schwab U.S. Treasury Money Fund

**Tax-Exempt Income***

☐ Schwab Municipal Money Fund–Sweep Shares™

**Schwab State-Specific Municipal Money Fund–Sweep Shares†:**

Select one of the funds below:

☐ California ☐ New Jersey

☐ Florida ☐ New York

☐ Massachusetts ☐ Pennsylvania

If you select any of the sweep money funds, your selection is considered a request for a money fund prospectus. It is an indication of interest only, and you are not obligated to buy any shares. Please read the prospectus carefully.

* Income may be subject to the federal and state alternative minimum tax (AMT).

† Each of our state-specific municipal money funds is designed to generate tax-exempt income for taxpayers of that state.

**Margin Trading**

To trade on margin, you borrow from Schwab, using all your Schwab assets as security for your loan. Margin transactions are riskier than cash purchases. It is your responsibility to carefully consider your individual circumstances and market conditions before trading on margin. Read the margin risk disclosure and the Account Agreement for more information on your obligations and risks.

The margin trading feature is **automatically included**, unless you check the box below.

**Note:** The Trust Agreement must specifically authorize the Trustee(s) to maintain a Margin and Short Account. The margin trading feature is automatically included. If you do not wish to have the margin feature, or if your Trust Agreement does not authorize it, check below.

☐ **Do NOT ADD margin trading**

**Day Trading** (Available only for certain Revocable Living Trusts.)

☐ I intend to use this account for the purpose of engaging in a strategy involving the transmission of intraday orders to buy or sell the same security or securities (a "day-trading strategy"). I have received and read the Day-Trading Risk Disclosure Statement and understand that accounts used for day-trading strategies are subject to approval and additional minimum balance and other margin requirements. **If you have not checked this box, you agree that you do not intend to use a day-trading strategy in this account.**

**Web Access to Your Account**

Select below if you would like to view your account information and place trade orders online. To access your account through the web, your email address is required.

☐ Yes, I want web access for the account. ☐ No, I do not want web access for the account.

**Enrollment for Electronic Trade Confirmations**

By providing your email address, you also consent to receiving Schwab eConfirms® (trade confirmations sent to your email address detailing any purchase or sale of a security). Mutual fund prospectuses for initial fund purchases and trade terms and conditions will be available on the web by link from the eConfirm. Unless you check the box below, we will soon send you an email to the above address with more information about eConfirms, your consent, and to verify your email address. Later, if you decide you do not want eConfirms, you may change your election and receive paper trade confirmations through the U.S. mail. If we can't verify your email address or are unable to deliver email to you at that address, we will send you paper trade confirmations through the U.S. mail.

☐ No, at this time I do not want eConfirms.

**Schwab One Checks and Visa® Debit Card** (Sign the Schwab One signature card below.)

**Checks and Visa Debit Cards** (optional)

Select one of the following options and sign the signature card below. If no selection is made and the signature card is signed, the default selection will be "Checking Only." Upon receipt of your starter checks, you will have the opportunity to order additional customized checks. **Please note that Visa debit cards are not allowed on Testamentary Trust accounts.**

☐ Checking Only

☐ Checking and Visa Debit Card

☐ Checking and Two Visa Debit Cards†

†Second Visa debit card available only for issuance in Co-Trustee's name.

(Continued on page 5.)

**If you've selected Schwab One® checks or Visa® debit card(s), you must ALSO sign below.**

**By signing below, Trustee(s) will be authorized to write checks and/or engage in Visa transactions. If you'd like to authorize additional people to use these items, contact us for further information.**

| For Schwab One checks and Visa debit cards **Sign Here** Also sign in Sections 8 and 9 | X Trustee's Signature | Date | X Co-Trustee's Signature | Date |
|---|---|---|---|---|

| FOR CHARLES SCHWAB USE ONLY: | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Branch Office and Account Number | | | | — | | | | | — | | | | | DDA Number | | | | | — | | | | | | | | |

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## FIGURE 5.26 *Continued*

# Form to Transfer Account from Individual to Trustee



**Signature Requirements**

All current Trustees listed in the Trust document must be listed in Section 4 and must sign Section 8. Only the Trustees who are to conduct business in the account must complete Sections 4 and 5 and must sign both Sections 8 and 9. **See instructions page for notary requirements.**

**a. Certification, Trust Indemnity and Agreement** (All current Trustees listed in the Trust document must complete.)

In consideration of Charles Schwab & Co, Inc. ("Schwab") opening and/or maintaining a brokerage account for the Trust named above (the "Trust"), the undersigned Trustees of the Trust represent, warrant and certify that the representations made in the Certification set forth in Section 4 of this Account Application are true, complete and accurate, that the undersigned Trustees are all of the Trustees of the Trust, that the Trust is in full force and effect and that the Trust Agreement (as defined above) has not been revoked, modified or amended in any manner which would cause the representations contained in this Certification to be inaccurate or incorrect.

If there is more than one Trustee, and no one Trustee has authority, acting individually and without notice to any other Trustee, to deal with Schwab independently, Schwab is authorized to follow the instructions of any of the Trustees listed in subsection (a) of Section 4 of this Account Application and to deliver funds, securities or other assets in the brokerage account to any Trustee or on any Trustee's instructions on the presumption that the Trustee so acting has obtained the requisite consent of the other Trustees in accordance with the Trust Agreement. It is the responsibility of the designated Trustee(s) to consult with all other Trustees before giving Schwab any instructions regarding the account. Schwab is not responsible for determining the purpose or propriety of any instructions received from any Trustee or for the disposition of payments or deliveries among Trustees. Any notice sent to one Trustee shall constitute notice to all Trustees. Schwab reserves the right to require the approval of all Trustees under certain circumstances, such as account disputes among Trustees.

Schwab will rely on this Certification and upon the representations made herein unless and until it receives written notice of changed Trustee(s) or written notice of any events affecting the Trustee's powers described above. The undersigned Trustee(s) agree to send written notice promptly to Schwab of any change in Trustees, of any amendment or modification to the Trust Agreement that would cause the representations contained in this Certification to be or become inaccurate or incorrect, or of the occurrence of any event that would affect the Trust's revocability, the Trustee's powers or any representations made in this Certification.

The undersigned Trustees hereby jointly and severally indemnify Schwab and each of its officers, directors, employees and agents from, and hold such persons harmless against, any claims, judgments, surcharges, settlement amounts or other liabilities or costs of defense or settlement (including attorneys' fees) arising out of or related to any actual or alleged improper or unsuitable actions taken at such Trustee's instructions in connection with the brokerage account established at Schwab for the Trust. This indemnification is made by the undersigned Trustees both in their capacities as Trustees and in their individual capacities, and shall not be limited by the Trustee's provision to Schwab of independent documentation concerning the representations made herein.

The representations and obligations stated herein shall survive termination of the Trust Agreement and the Account Agreement relating to the Trust's brokerage account.

**All Trustees listed in Section 4 must sign here.**

**Signature(s) Required**

X _____ 5-1-2003 Cathy Client
Trustee's Signature — Date — Print Name

X _____ _____ _____
Co-Trustee's Signature — Date — Print Name

State of _____, County of _____,

Subscribed and sworn to (or affirmed) before me, _____, (name and title of notarizing officer)

on _____(mm/dd/yyyy) by _____

(name of person signing the document who personally appeared) who personally appeared and is known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.*

WITNESS my hand and official seal.

*Notaries outside of California should attach the appropriate notarizing declaration in lieu of the above.

Notary Public _____ Expiration Date _____
(Signature of Notarizing Officer) (mm/dd/yyyy)

(SIGNATURE AND SEAL OF NOTARY REQUIRED)

State of _____, County of _____,

Subscribed and sworn to (or affirmed) before me, _____, (name and title of notarizing officer)

on _____(mm/dd/yyyy) by _____

(name of person signing the document who personally appeared) who personally appeared and is known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and who acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.*

WITNESS my hand and official seal.

*Notaries outside of California should attach the appropriate notarizing declaration in lieu of the above.

Notary Public _____ Expiration Date _____
(Signature of Notarizing Officer) (mm/dd/yyyy)

(SIGNATURE AND SEAL OF NOTARY REQUIRED)

(Continued on page 6.)

**Attention! Additional signatures required on page 6.**

| FOR CHARLES SCHWAB USE ONLY: | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Branch Office and Account Number | | | — | | | | | — | | | | | | |

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0 3 4 2 0 3

FIGURE 5.26 *Continued*

## Form to Transfer Account from Individual to Trustee



**9. Agree to Terms** (All current trustees who are to conduct business in the account must complete.)

I affirm that all authorizations and account privileges listed in this Agreement are permitted only if the terms of the Trust Agreement so provide.

**Opening the Account.** I authorize Schwab to open an account for the benefit of the Trust listed in Section 3 of this application. I understand that an account termination fee will apply if all or a portion of the assets in the account are transferred to another institution.

**Understanding Our Agreement.** I agree to

- read the Account Agreement,
- read other agreements relating to the Trust account,
- read amendments to the agreements,
- contact a Schwab Investment Consultant if I do not receive or understand the agreements or amendments, and
- be bound by the terms of those agreements and all amendments.

If I add features to the Trust account after it is opened, I agree to be bound by the terms of the agreements relating to those features.

**Responsibility for Investment Decisions.**

I acknowledge that

- I am responsible for determining whether each investment transaction or strategy I undertake is suitable for the Trust.
- except as provided in this section, Schwab is not responsible for determining whether any investment transaction or strategy is suitable for the Trust, and
- Schwab does not give tax or legal advice.

Schwab agrees that it is responsible for determining whether an investment transaction or strategy is suitable for me only if (1) it recommends it, or (2) it

- a Schwab Investment Consultant gives advice directly to me, and
- the advice is clearly identified as a Schwab recommendation for me to enter into a particular transaction or to buy or sell a particular security.

**Granting a Lien on Trust Accounts.** Each Trustee agrees that debts which the Trust account owes to Schwab are secured by a lien on all assets held at Schwab by the Trust. This includes assets

- which the Trust owns now or in the future,
- held in any current or future Schwab account, and
- in which the Trust has an interest.

This lien is further explained in the Schwab One® Account Agreement.

**Borrowing Money and Margin Trading.**

I understand that

- when I trade on margin, I am borrowing money from Schwab,
- margin transactions are riskier and can result in greater losses than cash transactions,
- the securities in this account can be sold by Schwab without advance notice to meet a margin call, and
- margin trading includes short sales and options trading.

I agree to

- pledge all of the Trust's assets, held now or in the future in my Schwab account(s), as collateral to secure loans from Schwab, and
- pay interest on debit charges, as described in the Account Agreement.

Schwab may use all the assets in this account as collateral to secure any amount owed to Schwab by this account. Schwab may combine the collateral in this account with the collateral of any other Schwab customer.

**Using the Check and Visa® Debit Card Features.**

- I authorize PNC Bank to issue checks and Visa debit cards as indicated in this Account Application, and
- I agree that each Trustee having signed Section 7 is authorized to write checks and engage in Visa debit card transactions.
- I understand that if the checking feature is terminated, my Visa debit card is automatically cancelled.

**Verification.** I authorize Schwab to inquire from any source, including a consumer reporting agency, as to my identity (as required by federal law), creditworthiness and ongoing eligibility for the account (and that of my spouse, if I live in a community property state) at account opening, at any time throughout the life of the account, and thereafter for debt collection or investigative purposes.

**Account Holders with More Than One Account at Schwab.** I authorize Schwab to transfer assets between accounts when no written authorization is requested.

**Arbitration. I agree to settle by arbitration any controversy between myself and Schwab and/or any Schwab officers, directors, employees or agents relating to the Account Agreement, this brokerage account or account transactions, or in any way arising from the Trust's relationship with Schwab as provided in the Schwab One Account Agreement in Section 23 on pages 32–34. The following disclosures are made pursuant to applicable self-regulatory organization rules: (1) arbitration is final and binding on all parties; (2) the parties are waiving their right to seek remedies in court, including the right to a jury trial; (3) pre-arbitration discovery is generally more limited than and different from court proceedings; (4) the arbitrators' award is not required to include factual findings or legal reasoning, and any party's right to appeal or seek modification of rulings by the arbitrators is strictly limited; (5) the panel of arbitrators will typically include a minority of arbitrators who were or are affiliated with the securities industry.**

**No person shall bring a putative or certified class action to arbitration, nor seek to enforce any pre-dispute arbitration agreement against any person who has initiated in court a putative class action, or who is a member of a putative class who has not opted out of the class with respect to any claims encompassed by the putative action until: (1) the class certification is denied, (2) the class is decertified, or (3) the customer is excluded from the class by the court. Such forbearance to enforce an agreement to arbitrate shall not constitute a waiver of any rights under this Agreement except to the extent stated herein.**

**BY SIGNING THIS AGREEMENT, I ACKNOWLEDGE THAT I HAVE RECEIVED A COPY OF THE ACCOUNT TERMS TO RETAIN FOR MY RECORDS. HOLDERS OF ACCOUNTS WITH MARGIN FEATURES FURTHER ACKNOWLEDGE THAT SECURITIES SECURING LOANS FROM SCHWAB MAY BE LENT TO SCHWAB AND LENT BY SCHWAB TO OTHERS.**

**Note that the Account Agreement contains a pre-dispute arbitration agreement, which is set forth in Section 23, pages 32–34, of the Schwab One Account Agreement.**

**I certify under penalty of perjury that (1) the number shown on this application is the correct taxpayer identification number of the account holder, and (2) the account holder is not subject to back-up withholding because (a) the account holder is exempt from back-up withholding, (b) we have not been notified by the Internal Revenue Service (IRS) that the account holder is subject to back-up withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified us that the account holder is no longer subject to back-up withholding, and (3) the account holder is a U.S. entity (including a U.S. resident alien). (I understand that if I have been notified by the IRS that the account holder is subject to back-up withholding as a result of dividend or interest underreporting, and I have not received a notice from the IRS advising that back-up withholding is terminated, I must strike or cross out the information contained in item 2 above.) The IRS does not require my consent to any provision of this document other than the certifications required to avoid back-up withholding.**

| | | | |
|---|---|---|---|
| **Signature(s) Required** | **X** Trustee's Signature | 5-1-2003 Date | Print Name: Cathy Client |
| | **X** Co-Trustee's Signature | Date | Print Name |

| FOR CHARLES SCHWAB USE ONLY: | | |
|---|---|---|
| Approved by | | Print Name of Approver |
| Date Approved | Source Code | Branch Office and Account Number |

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From the attorney's standpoint, the easiest and most efficient method is for the client to deposit the certificates with a broker, which will place the stock in street name and set up the necessary account in the name of the trustee. The trustee has the option of leaving the stock in the brokerage account or requesting that new certificates be issued in the name of the trustee to be held in the trustee's physical custody. If the client wants new certificates to be issued and does not have an existing account with the broker, the client should expect to pay a fee for the broker's service of having the certificates retitled. Especially where a client owns stock in numerous companies, most attorneys strongly encourage the client to employ the services of a broker because of the time and effort involved in arranging the transfers with the transfer agents.

If the client is unwilling to deposit the certificates with a broker, then transfer of title must be handled directly with the corporation's transfer agent. The attorney should obtain the original stock certificate from the client. The client may desire a receipt from the attorney for the certificates. While in the attorney's custody, the original stock certificate should be secured in a safe or other secure location. The attorney should make a file copy of the front and back of the certificate immediately upon its receipt and then place the certificate in the secure location. The first step is to identify the current transfer agent. The name and address of the transfer agent at the time the certificate was issued is indicated on the certificate. If that company is not the current transfer agent and cannot direct the attorney to the current transfer agent, the required information can usually be obtained from the corporation or its website. If for some reason the information is still not forthcoming, a local broker can usually identify the transfer agent by the corporation's CUSIP number. The transfer agent will advise the attorney what documents are required to retitle the stock. The typical requirements are: the original stock certificate; a letter of instruction from the client with a Medallion signature guarantee; the endorsed stock certificate or a stock power of attorney with a Medallion signature guarantee; Internal Revenue Service Form W-9, "Request for Taxpayer Identification Number and Certification"; and copies of the relevant trust pages, including the pages with the names of the trust and settlor, the designation of the trustees, and the notarized signatures. A sample letter of instruction to retitle stock in the name of a trustee is set forth in Figure 5.27. A sample stock power of attorney is set forth in Figure 5.28. In preparing the stock power, the space for the name of the attorney should be left black because it will be filled in by the transfer agent. Form W-9 is reprinted in Figure 3.4. A sample cover letter to transmit the required documents is set forth in Figure 5.29. Because an original stock certificate is enclosed, the package to the transfer agent should be sent by registered mail or by certified mail with a return receipt requested. The attorney should obtain a receipt from the client when the original reissued stock certificate is delivered. A sample "Receipt for Original Stock Certificate" is set forth in Figure 5.30.

The attorney should always inquire whether a client who owns stock in a publicly traded corporation participates in a dividend reinvestment plan (DRIP). Typically, shares purchased through a DRIP are held by the plan. The participant maintains an account and receives an investment statement reflecting the shares purchased and held by the plan. The best way to retitle a DRIP in the name of a trust is to contact the plan and use the procedure or form that they require.

FIGURE 5.27

**Letter of Instruction to Retitle Stock**

**LETTER OF INSTRUCTION**

Transfer Agent

RE: Hank Husband and Wanda Wife
Public Corporation, Inc,
Certificate Number 01234567

Ladies and Gentlemen:

Please reissue the above-referenced stock certificate in the name of the following revocable trust:

New Owner: **Hank Husband and Wanda Wife, as Co-Trustees of the Hank Husband Trust Dated May 1, 2003**

Title of Trust: Hank Husband Trust Dated May 1, 2003

Date of Trust: May 1, 2003

Address: 150 Home St.
City, State 12345-6789

Social Security No.: 123-45-6789 (Hank Husband's)

If you require any further information, please do not hesitate to contact us.

Dated: _____

_____
**HANK HUSBAND**

_____
**WANDA WIFE**

**SIGNATURE GUARANTEE**
**(Medallion)**

_____

## FIGURE 5.28

## Stock Power of Attorney

**STOCK POWER OF ATTORNEY**

FOR VALUE RECEIVED, We, **Hank Husband and Wanda Wife**, hereby assign and transfer unto **HANK HUSBAND AND WANDA WIFE, AS CO-TRUSTEES OF THE HANK HUSBAND TRUST DATED MAY 1, 2003,** one hundred (100) shares of the stock of PUBLIC CORPORATION, INC., represented by Certificate Number 01234567, and we do hereby irrevocably constitute and appoint _____, Attorney, to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

DATED this May 1, 2003.

_____

**HANK HUSBAND**

_____

**WANDA WIFE**

**SIGNATURE GUARANTEE**
**(Medallion)**

_____

FIGURE 5.29

**Transmittal Letter to Transfer Agent**

Transfer Agent

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Hank Husband and Wanda Wife
Public Corporation, Inc.
Certificate Number 01234567

Ladies and Gentlemen:

We represent Hank Husband and Wanda Wife in connection with their estate planning. On their behalf, we request that you reissue the above referenced stock certificate in the name of "*Hank Husband and Wanda Wife, Co-Trustees of the Hank Husband Trust Dated May 1, 2003.*"

Pursuant to instructions from your representative, enclosed are the following:

1) Original stock certificate Number 01234567;

2) Letter of instruction from Hank Husband and Wanda Wife requesting the reissuance, with signatures guaranteed;

3) Stock Power of Attorney, with signatures guaranteed;

4) Form W-9, Request for Taxpayer Identification Number and Certification; and

5) Copies of the relevant trust provisions, including the creation and name of the trust, the trustees' investment powers, the appointment of the trustees, and the required signatures.

Please send the reissued original stock certificate to us at the above address. Do not hesitate to contact us if you have any questions or require additional information. Thank you for your assistance in this matter.

Yours very truly,

Abe Attorney

Enclosures

cc: Hank Husband and Wanda Wife (without enclosures)

## FIGURE 5.30

## Receipt for Original Stock Certificate

[FIRM LETTERHEAD]

**I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING STOCK CERTIFICATE FROM BROWN & BLACK, P.A.:**

Public Corporation, Inc.
Certificate Number 09876543
100 Shares

_____

**Hank Husband**

Date: _____, 2003

### 2. Bonds and Unit Trusts

The procedure for retitling publicly traded bonds and unit trusts to a revocable living trust is similar to the procedure described above for retitling stock certificates.[90]

### 3. Bearer Bonds

A bearer bond is an unregistered, negotiable bond on which interest and principal are payable to the holder. Ownership of a bearer bond can be transferred by physical delivery of the certificate to the transferee. Bearer bonds can be transferred to a trustee by assignment; the bonds should be placed in a safe deposit box leased in the name of the trustee.[91] Some bearer bonds can be converted to registered form; if registration is an option, the client may wish to register the bearer bonds in the name of the trustee.

## G. PROMISSORY NOTES, MORTGAGES, AND SECURITY INTERESTS

### 1. Promissory Notes

A promissory note is a written promise by the maker to pay a specified sum of money. A promissory note is transferred to a trust by means of assignment.[92] The attorney should obtain a copy of the note from the client in order to prepare the assignment, and a copy of the note should be attached to the assignment. A sample "Assignment of Promissory Note" is set forth in Figure 5.31. The assignment is not recorded.

Following assignment of a note to the trust, the maker should be notified to remit future payments to the trustee rather than the original payee. A sample letter giving the maker notice of the assignment is set forth in Figure 5.32.

In questioning a client about his or her assets, the estate planning attorney may find that the client has lent money to a family member or friend but that the indebtedness is not evidenced by a promissory note. The attorney should advise the client to have the indebtedness reduced to writing, prepare a note for execution by the maker, and assign the note to the trust.

### 2. Mortgages

A mortgage is an interest in real property that secures the indebtedness of the mortgagor to the mortgagee. A client's interest in a mortgage and note can be transferred to a revocable living trust by assignment. The client should furnish the estate planning attorney with a copy of the recorded mortgage and note. The attorney should be familiar with the state and county recording requirements and ensure that all such requirements are met. The assignment should be recorded in the public records in the state and county in which the real property is located.

Following assignment of a mortgage to a trust, the mortgagor should be notified to remit future payments to the trustee rather than the original mortgagee. A sample letter giving the mortgagor notice of the assignment of a mortgage is set forth in Figure 5.33. The attorney should also consider notifying the insurance companies maintaining the mortgagee title insurance and the property and casualty insurance on the

**FIGURE 5.31**

**Assignment of Promissory Note**

**ASSIGNMENT OF PROMISSORY NOTE**

**FOR VALUE RECEIVED,** the undersigned, **JOE JONES** and **JANE JONES,** husband and wife ("Assignors"), hereby assign, transfer, and set over to **JOE JONES AND JANE JONES, AS CO-TRUSTEES OF THE JONES FAMILY TRUST DATED MAY 1, 2003,** all of their right, title, and interest in and to that certain Promissory Note, dated [date], in the original principal amount of $[AMOUNT], a copy of which is set forth in the Exhibit "A" attached hereto and incorporated herein by this reference.

**IN WITNESS WHEREOF,** the Assignors have caused these presents to be executed this May 1, 2003.

WITNESSES:

_____ _____

**JOE JONES**

_____

_____ _____

**JANE JONES**

_____

[NOTARY PROVISION]

FIGURE 5.32

**Letter Notifying Maker of Promissory Note about Assignment**

Mary Maker
123 Maple Street
City, State 22222

RE: Assignment of Promissory Note

Dear Ms. Maker:

We represent Joe Jones, payee under your Promissory Note, dated [DATE], in the initial principal amount of [AMOUNT] (the "Note"). This letter will notify you that Mr. Jones has assigned the Note to the Joe Jones Trust Dated May 1, 2003. Please make all future payments under the Note payable to "Joe Jones, Trustee of the Joe Jones Trust Dated May 1, 2003." The address will remain the same.

Please let us know if you have any questions. Thank you for your attention in this matter.

Yours very truly,

Abe Attorney

cc: Mr. Joe Jones

**FIGURE 5.33**

**Letter Notifying Mortgagor about Assignment**

Mark Mortgagor
456 Elm Street
City, State 33333

Re: Assignment of Mortgage and Promissory Note

Dear Mr. Mortgagor:

We represent Joe Jones, mortgagee under your Mortgage, dated January 29, 1999, and payee under your Promissory Note, dated January 29, 1999, in the initial principal amount of $100,000. This letter will notify you that Mr. Jones has assigned the Mortgage and Note to the Joe Jones Trust Dated May 1, 2003. Please make all future mortgage payments payable to *"Joe Jones, Trustee of the Joe Jones Trust Dated May 1, 2003."* The address will remain the same.

Please let us know if you have any questions. Thank you for your attention in this matter.

Yours very truly,

Abe Attorney

cc: Mr. Joe Jones

property subject to the mortgage. When a client holds a mortgage on real property located in another state, the attorney should have the assignment of mortgage and note prepared or reviewed by an attorney licensed to practice law in the state in which the property is located.[93]

### 3. Uniform Commercial Code Security Interests

Article 9 of the Uniform Commercial Code, adopted in whole or with modifications in every state, governs transactions creating a security interest in personal property. A security interest arises from a security agreement by which a debtor grants the secured party a security interest in specified collateral to secure payment or other performance of the debtor's obligation. A common means of perfecting a security interest is by filing a financing statement with the appropriate state authority. The form used to file a financing statement is Form UCC-1, titled "Financing Statement." A financing statement is recorded in the public records in accordance with the applicable state statute. For example, a UCC-1 may be filed both in the county of origin as well as at the state level.

A security interest is transferred to a trust by means of a standard assignment. A sample "Assignment of Security Interest" is set forth in Figure 5.34. The financing statement is updated to reflect the assignment by filing a Form UCC-3, titled "Statement of Change." A copy of Form UCC-3 is reprinted in Figure 5.35. A UCC-3 should be filed for each UCC-1. The debtor does not need to sign a Form UCC-3 unless, in addition to being assigned, the financing statement was amended.

## H. CLOSELY HELD BUSINESSES

Corporations, partnerships, and sole proprietorships are the forms in which closely held businesses are generally operated. If a closely held business is to be funded into a trust, the trust should include express authorization for the trustee to hold and operate the business.[94] Specific authorization is important because closely held businesses are traditionally regarded as risky endeavors and may not be appropriate investments for a trustee under the prudent investor rule or other applicable fiduciary standard. The method used to transfer ownership of a closely held business to a trust depends on the organizational form of the business.

### 1. C Corporations

C corporations are organized and operated under the applicable state corporation law. For federal income tax purposes, a C corporation is any corporation that is not an S corporation.[95] A C corporation and its shareholders are subject to double taxation in that the corporation, a separate taxable entity, is taxed on its taxable income and dividends paid to the shareholders are included in their taxable incomes.

#### *a. Transfer of Ownership*

A shareholder's ownership in a closely held C corporation is evidenced by a stock certificate. Although the client should have possession of his or her stock certificate,

**FIGURE 5.34**

**Assignment of Security Interest**

**ASSIGNMENT OF SECURITY INTEREST**

**FOR VALUE RECEIVED,** the undersigned, **JOE JONES** ("Assignor"), hereby assigns, transfers, and sets over to **JOE JONES, AS TRUSTEE OF THE JOE JONES TRUST DATED JANUARY 3, 2003,** all of Assignor's right, title, and interest in and to that certain Security Agreement, dated April 1, 2002, between Donna Debtor in favor of Assignor (a copy of which is set forth in Exhibit "A" attached hereto and incorporated herein by this reference), including but not limited to Assignor's security interest under that certain Financing Statement, dated April 1, 2002, between Donna Debtor and Assignor, as filed with the Clerk of Court, County, State, on April 3, 2002, and bearing File Number Official Record Book 1234, Page 5678, and also as filed with the State Secretary of State, on April 3, 2002, and bearing File Number 3456 (a copy of which is set forth in Exhibit "B" attached hereto and incorporated herein by this reference).

**IN WITNESS WHEREOF,** the Assignor has caused these presents to be executed this January 3, 2003.

WITNESSES:

_____ _____

**JOE JONES**

_____

[NOTARY PUBLIC SIGNATURE]

## FIGURE 5.35

## Form UCC-3, Statement of Change

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE # File Number

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☒ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 8.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address. Please refer to the detailed instructions in regards to changing the name/address of a party.

☐ DELETE name: Give record name to be deleted in item 6a or 6b.

☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

| 6b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| | | | |

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME Joe Jones, Trustee of the Joe Jones Trust, Dated Jan. 3, 2003

OR

| 7b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| | | | |

| 7c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |
|---|---|---|---|---|
| 12 Ocean Ave. | City | ST | 12345 | USA |

| 7d. SEE INSTRUCTIONS | ADD'L INFO RE ORGANIZATION DEBTOR | 7e. TYPE OF ORGANIZATION | 7f. JURISDICTION OF ORGANIZATION | 7g. ORGANIZATIONAL ID #, if any |
|---|---|---|---|---|
| | | | | ☐ NONE |

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. NAME of SECURED PARTY of RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

| 9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| Jones | Joe | | |

10. OPTIONAL FILER REFERENCE DATA

FILING OFFICE COPY — UCC FINANCING STATEMENT AMENDMENT (FORM UCC3) (REV. 05/22/02)

often the attorney will find that the issued certificates are still located in the corporate book along with the blank certificates. To transfer ownership of stock in a closely held corporation, the shareholder can either endorse the back of the original stock certificate by completing the appropriate blanks or execute a stock power of attorney. Unlike stock powers of attorney to transfer shares of publicly held corporations, which typically must be certified with a Medallion signature guarantee, a stock power of attorney to retitle stock in a closely held corporation typically either does not require any signature verification or requires only a notarized signature. A sample stock power of attorney is set forth in Figure 5.36. A new stock certificate is then prepared in the name of the trust.

Practices vary concerning to whom to address the request to transfer ownership in a closely held corporation. If the client is the sole or primary owner of the corporation, the corporate book is likely to be in his or her possession. In this context, the client will usually deliver the corporate book to the estate planning attorney for the issuance of the new certificate.[96] After the new certificate has been issued, the attorney should be careful to return the corporate book to the client and to obtain a receipt therefor. A sample receipt for a corporate book is set forth in Figure 5.37. Others who may have possession of the corporate book include the corporation's attorney, accountant, secretary, or manager. A transfer request can generally be directed to the person having custody of the corporate book. To make sure that stock is properly retitled in the trust name, a letter of instruction should be prepared for presentation to the agent. Unlike letters of instruction to transfer agents of publicly held corporations, which often must be certified with a Medallion signature guarantee, a letter of instruction to retitle stock in a closely held corporation typically does not require any signature verification. A sample letter of instruction is set forth in Figure 5.38. In many cases, the client will personally deliver the original stock certificate and letter of instruction to the corporate agent, obviating the necessity for mailing the original document.

### *b. Restrictions on Transfer*

Before making a transfer of stock in a closely held corporation to a trust, the attorney should ascertain whether there are any restrictions on the sale, exchange, or other disposition of the stock that would prohibit the transfer. Even if there are no outright prohibitions, there may be conditions, such as the consent of or notice to the other shareholders, that must be satisfied before a transfer can occur. Restrictions and conditions are generally printed or typed in legend form directly on the stock certificates or contained in a shareholder agreement.

Common conditions on the transfer of stock in a closely held corporation are the written consent of the other shareholders and the joinder of the new shareholder in the shareholders' agreement. A consent should be prepared that incorporates all the requirements for transfer of the shares. If, in addition to the shareholders, the corporation is required to consent to a transfer, the corporation should also be made a party to the consent. The attorney should also consider the impact of the transfer of shares to a trust on the other provisions in the shareholders' agreement. For example, the agreement is likely to contain provisions that apply upon the death of a share-

FIGURE 5.36

**Stock Power of Attorney**

**STOCK POWER OF ATTORNEY**

FOR VALUE RECEIVED, I, **CATHY CLIENT,** hereby assign and transfer unto **CATHY CLIENT, AS TRUSTEE OF THE CATHY CLIENT REVOCABLE TRUST, DATED MAY 1, 2003,** one hundred (100) shares of the capital stock represented by Certificate Number 1 of CATHY CLIENT PROPERTIES, INC., and I do hereby irrevocably constitute and appoint _____, Attorney, to transfer the said stock on the books of the Corporation with full power of substitution in the premises.

DATED this 1st day of May, 2003.

_____

**CATHY CLIENT**

FIGURE 5.37

**Receipt for Corporate Book**

[LAW FIRM LETTERHEAD]

**I HEREBY ACKNOWLEDGE RECEIPT OF THE FOLLOWING CORPORATE BOOK FROM LAW FIRM, P.A.:**

**CATHY CLIENT PROPERTIES, INC., a _____ corporation**

_____

**Cathy Client**

Date: _____

FIGURE 5.38

**Letter of Instruction to Retitle Stock**

**LETTER OF INSTRUCTION**

[Custodian of Corporate Book]
123 Main Street
Hometown, State 12345

RE: Cathy Client
Cathy Client Properties, Inc.
Certificate Number 1

Dear _____:

Please reissue the above-referenced stock certificate in the name of the following revocable trust:

New Owner: **Cathy Client, as Trustee of the Cathy Client Revocable Trust, Dated May 1, 2003**

Title of Trust: Cathy Client Revocable Trust

Date of Trust: May 1, 2003

Address: 150 Home St.
City, State 12345-6789

Social Security No.: 123-45-6789 (Cathy Client's)

Dated this May 1, 2003.

**Cathy Client**

holder. The parties may wish expressly to provide in the consent that, in construing provisions of the agreement referring to the death of a shareholder, the shares owned by the trust will be considered to be owned by the transferor. A sample consent to a transfer of shares is set forth in Figure 5.39.

A shareholders' agreement may specify one or more circumstances in which stock of the corporation can be transferred without invoking the consent requirements. Modern well-drafted agreements commonly except from the consent requirements a transfer by a shareholder to a revocable living trust of which the shareholder is the settlor, a beneficiary, and a trustee or co-trustee. If a shareholders' agreement does not contain an exception for transfers to revocable living trusts, when the first shareholder to engage in estate planning expresses a desire for consent to a transfer, the shareholders may elect to go ahead and amend the shareholders' agreement to except transfers to revocable living trusts so that the exception will be available when the other shareholders engage in their estate planning.

### *c. Section 1244 Stock*

Before transferring stock in a closely held C corporation to a trust, the attorney should ascertain whether the stock is Section 1244 stock, which is eligible for special income tax treatment. A loss incurred by an individual on the sale of Section 1244 stock is treated as an ordinary loss rather than a capital loss.[97] The treatment is advantageous because the deduction for capital losses is more limited than the deduction for ordinary losses. To qualify as Section 1244 stock, the stock must have been issued by a domestic corporation that, at the time the stock was issued, had received not more than $1 million in money or other property for stock, as a contribution to capital, and as paid-in-surplus.[98] In addition, the corporation, during its five most recent taxable years ending before the date of the loss, must have derived more than 50 percent of its aggregate gross receipts from sources other than royalties, dividends, interest, annuities, and sales or exchanges of stock or securities.[99] Because the special treatment for Section 1244 stock is limited to individual owners to whom the stock was issued, the benefit is lost if the stock is transferred to a trust.[100]

The attorney should review with the trust client the ramifications of losing Section 1244 status for stock that is transferred to a trust. How to proceed depends on an evaluation of the pros and cons of the two alternatives. If, for example, the business is nearing bankruptcy and there is a chance that the stock will become worthless, it would be prudent to delay funding the stock in order to preserve the ordinary loss treatment. On the other hand, if a company is highly profitable and likely to remain so, the client may decide that the advantages to be achieved by using the trust outweigh any potential future benefits of taking an ordinary loss. If in addition the owner of the highly profitable business were elderly and in poor health, he or she would most certainly chose to fund the stock into a revocable living trust to provide against potential disability and to avoid probate and would not be concerned with forfeiting the ordinary loss treatment. Whether a client elects to preserve the income tax advantage for Section 1244 stock or to fund the stock into a trust, the attorney may wish to confirm to the client in writing the discussion of the various competing considerations and the client's decision.

FIGURE 5.39

**Consent to Transfer and Joinder in Shareholders' Agreement**

**CONSENT TO TRANSFER AND**
**JOINDER IN SHAREHOLDERS' AGREEMENT**

**THIS CONSENT TO TRANSFER AND JOINDER IN SHAREHOLDERS' AGREEMENT** is entered into this _____, 2003, by and among **CATHY CLIENT, AS TRUSTEE OF THE CATHY CLIENT REVOCABLE TRUST, DATED MAY 3, 2003** (the "Trust"), **SUE SMITH** ("Smith"), and **JOE JONES** ("Jones").

**WHEREAS, CATHY CLIENT** ("Client"), Smith, and Jones, shareholders of **CSJ ENTERPRISES, INC.** (the "Corporation"), entered into a Shareholders' Agreement, dated November 1, 1998 (the "Shareholders' Agreement"); and

**WHEREAS**, the Shareholders' Agreement imposes certain restrictions on the transfer of shares in the Corporation; and

**WHEREAS**, Client desires to transfer the shares of the Corporation owned by Client to the Trust and Smith and Jones are willing to consent to the transfer, according to the provisions of the Shareholders' Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants stated in the Shareholders' Agreement, the parties agree as follows:

1. Smith and Jones consent to the transfer to the Trust of all one hundred (100) shares of the Corporation owned by Client.

2. The Trust joins in the Shareholders' Agreement and agrees to be bound by all duties, obligations, and conditions stated therein.

3. For purposes of construing the provisions of the Shareholders' Agreement relating to death, Client shall be treated as the shareholder of all shares owned by the Trust and the provisions of the Shareholders' Agreement relating to death of a shareholder shall apply in the event of death of Client to the shares held by the Trust as if they were held by Client.

FIGURE 5.39 *Continued*

**Consent to Transfer and Joinder in Shareholders' Agreement**

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Consent and Joinder effective as of the date first above written.

**CATHY CLIENT, AS TRUSTEE OF THE CATHY CLIENT REVOCABLE TRUST, DATED MAY 3, 2003**

**SUE SMITH**

**JOE JONES**

## 2. S Corporations

The considerations discussed above with respect to the transfer of ownership and restrictions on the transfer of stock in C corporations apply equally in the case of S corporations.[101] In addition, before transferring S corporation stock to a trust, the attorney must consider the special rules that limit the types of trusts that may own stock in an S corporation.

An S corporation is a small business corporation that has elected S corporation treatment.[102] A small business corporation is a domestic corporation with not more than seventy-five shareholders, no nonresident aliens as shareholders, and not more than one class of stock.[103] Only individuals, estates, certain types of trusts, and certain types of exempt organizations are allowed to be shareholders of an S corporation.[104] For federal income tax purposes, an S corporation is treated much like a partnership in that the S corporation is not a taxable entity and income and deductions of the S corporation flow through to the shareholders.[105]

The practitioner should always exercise caution when transferring stock in an S corporation to a trust. Only a few types of living trusts are eligible to be S corporation shareholders. If S corporation stock is owned by a trust that is not a qualifying shareholder, then the S corporation ceases to be an S corporation and its S corporation status is terminated.[106] The following types of inter vivos trusts are authorized to be shareholders of an S corporation:[107]

(1) A trust all of which is treated under the grantor trust rules as owned by an individual who is a U.S. citizen or resident;[108]
(2) A trust that was described in category (1) immediately before the death of the deemed owner and which continues in existence after the deemed owner's death, for a period of two years after the deemed owner's death;
(3) A qualified subchapter S trust ("QSST");
(4) A trust created primarily to exercise the voting power of stock transferred to it; and
(5) An electing small business trust ("ESBT").

A trust qualifies as a QSST if its beneficiary elects treatment as a QSST and the following requirements are satisfied:[109]

(1) All the income of the trust is distributed, or required to be distributed, currently to one individual who is a U.S. citizen or resident; and
(2) The terms of the trust require that:
   –During the life of the current income beneficiary, there will be only one income beneficiary of the trust;
   –Any corpus distributed during the life of the current income beneficiary will be distributed only to that beneficiary;[110]
   –The income interest of the current income beneficiary will terminate on the earlier of the death of the beneficiary or the termination of the trust; and
   –If the trust terminates during the life of the current income beneficiary, all the assets are distributable only to such beneficiary.

A trust qualifies as an ESBT if the trustee of the trust elects treatment as an ESBT and the following requirements are satisfied:[111]

(1) The trust does not have as a beneficiary any person other than an individual, an estate, a charitable organization or certain other exempt organizations, or a state or political subdivision that holds a contingent interest in the trust and is not a potential current beneficiary; and
(2) No interest in the trust was acquired by purchase.

A potential current beneficiary is a person who is entitled to, or at the discretion of any person may receive, a distribution from the principal or income of the trust.[112]

Thus, a transfer of S corporation stock to a revocable or irrevocable living trust that is an eligible trust shareholder of a small business corporation will not jeopardize the corporation's S status. Before making such a transfer, however, the planner should also take into account the potential consequences of future events.

---

**EXAMPLE: Transfer of S Corporation Stock to Grantor Trust**

In 1992, Gina Grantor created a revocable living trust into which she intended to transfer all her assets for estate planning purposes. Gina transferred 100 shares of her stock in an S corporation to the trust. The transfer of ownership of the S corporation stock from Gina to her revocable living trust will not jeopardize the ability of the corporation to qualify as an S corporation because the trust is a grantor trust, which is an eligible S corporation shareholder. Gina died in 2004. Under the terms of her trust, upon her death the successor trustee is to continue to hold the property in trust for specified beneficiaries and purposes. The trust will continue to be an eligible S corporation shareholder for the two-year period beginning on Gina's date of death. After the expiration of the two-year period, the trust will cease to be an eligible S corporation shareholder unless it qualifies as a QSST or an ESBT.[113]

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### 3. Professional Corporations

The considerations discussed above with respect to the transfer of ownership of stock in C corporations and S corporations apply equally in the case of professional corporations.[114] In addition, before transferring stock in a professional corporation to a trust, the attorney must consider the special rules under state law that limit the ownership of professional corporations.

The ability of a trust to own stock in a professional corporation depends on the applicable state professional corporation law. The purpose of regulating professional corporations is to protect the public from nonprofessionals dictating the professional judgment of those individuals who are licensed to perform a professional service. Ac-

cordingly, all states limit the individuals and entities to whom or which stock can be issued or transferred.

Some states, including Nevada and Michigan, expressly authorize trusts to own stock in a professional corporation.[115] In Nevada, a stockholder can sell or otherwise transfer shares of a professional corporation only to: (1) another natural person who is licensed to render the service that the corporation was organized to provide; (2) to the personal representative or estate of a deceased or legally incompetent stockholder; provided, however, that the personal representative or estate can hold the shares only for a reasonable period and may not participate in decisions concerning the rendering of professional services; and (3) a revocable trust if the stockholder acts as trustee and any person who acts as co-trustee and is not licensed to perform the professional service does not participate in any of the decisions concerning the rendering of the services.[116] Michigan has a similar, but not identical, provision concerning the ownership of professional corporation stock by a trust. In Michigan, a stockholder of a professional corporation may transfer shares to another professional individual, to a personal representative or estate of a deceased or incompetent stockholder for a reasonable period, or to a trust or split interest trust in which the trustee and current income beneficiary are both licensed persons in a professional corporation.[117]

Significant differences exist between the Nevada and Michigan provisions. In Nevada, for example, only a revocable trust can own stock in a professional corporation. In contrast, the Michigan provision seems to allow ownership by revocable trusts and irrevocable trusts, such as a charitable remainder annuity trust or unitrust of which the professional individual is both trustee and income beneficiary. Michigan requires both the trustee and the beneficiary to be professional corporations, whereas Nevada does not limit the beneficiary. Nevada allows a nonprofessional co-trustee to serve with restrictions, but Michigan does not expressly address the position of a nonprofessional co-trustee.

If a state statute expressly allows ownership of professional corporation stock by a trust, trusts in that state should be specifically tailored to satisfy the statutory requirements. For example, assume in Nevada a married couple wishes to establish a revocable living trust of which they are co-trustees. If the wife is a member of a professional corporation, the trust should provide that, if the trust holds stock in a professional corporation and more than one trustee is serving as trustee of the trust, any co-trustee who is not licensed to perform the professional service performed by the corporation shall not participate in any of the decisions concerning the rendering of the services.

Some state professional corporation laws limit the holding of shares in the corporation to specified individuals and entities but do not expressly address the transfer of shares to a trust. For example, the New Hampshire statute provides that a shareholder of a professional corporation may transfer shares only to: (1) a natural person authorized to render a professional service performed by the corporation; (2) a general partnership in which all the partners are qualified persons with respect to the professional corporation and in which at least one partner is authorized in New Hampshire to render the professional service performed by the corporation; and (3) professional corporations authorized in New Hampshire to render a professional service performed by the corporation.[118] Reasonable estate planning attorneys seem to interpret such a statute at least two ways in relation to trust funding. The first inter-

pretation, which conservatively emphasizes the literal language of the statue, holds that a trust is not an authorized shareholder of a corporation because a trust is not a natural person, a general partnership, or a professional corporation described in the statute. Under this view, stock in a professional corporation is not funded into a trust and will be subject to probate if the professional still owns the stock at the time of death. Others believe that such a statute permits the transfer of stock to a trust if the trustee of the trust is a natural person authorized to render the professional service performed by the corporation.

In deciding what approach to follow in representing a trust client with stock in a professional corporation, the attorney may consider the potential consequences of an unauthorized transfer. In most states, a transfer of stock to an unauthorized transferee is void.[119] Thus, if it is uncertain whether stock may be transferred to a trust and an attempted transfer is challenged in a court of competent jurisdiction, the court may find in favor of the trustee. If the court rules against the trustee, the attempted transfer will be held void, which means that ownership of the stock will be vested in the settlor as if no transfer had been attempted. Moreover, the trust's ownership may never be challenged, in which case the attempt was worthwhile because the settlor's purposes in establishing the trust can be fully achieved. If, based on considerations such as these, the attorney decides to proceed with a transfer of professional corporation stock to a trust, the attorney should also fully advise the client concerning the uncertainty of the law and the possible outcomes.

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### EXAMPLE: Transferring Stock in a Professional Corporation

Larry Lawyer and Ann Attorney practice law in State S, a state that does not specifically permit transfer of stock in a professional corporation to a trust. Larry Lawyer represents Marie, a member of ProfCorp, a professional corporation, in connection with her estate planning. Marie created a revocable living trust into which Lawyer and Marie are transferring all of Marie's assets. Ann Attorney, ProfCorp's corporate attorney, has custody of ProfCorp's corporate book. Lawyer believes that S's professional corporation law permits the transfer of stock in a professional corporation to a trust, so long as the trustee of the trust is a licensed professional. Lawyer prepared a stock power of attorney and letter of instruction requesting that Attorney transfer Marie's stock in ProfCorp to Marie, as trustee of her living trust. In Ann Attorney's view, trust are not permissible professional corporation shareholders because, unlike individuals and certain partnerships and corporations, they are not expressly designated as permissible transferees in the statute. Accordingly, Attorney responded to Larry Lawyer's request by declining to issue a new stock certificate in the name of Marie's trust. Lawyer and Attorney discussed the issue by telephone, but neither was swayed by the other's arguments. Facing this roadblock, Lawyer considered other options. One possibility is simply to leave the ProfCorp stock out of Marie's trust. If Marie died owning the stock, a probate of the single asset would be required. Al-

though a probate would entail additional expenses of administration and court fees, probate proceedings in State S are not particularly burdensome. The real dilemma is presented by the possibility that Marie may become incapacitated while owning the stock. Larry Lawyer may recommend that Marie retain the executed stock power of attorney in her records for possible future use. Lawyer may also consider relying on Marie's attorney-in-fact under her durable power of attorney; should Marie become incapacitated, the attorney-in-fact may be able to transfer the stock to the trust. In either case, the issue of the trust ownership of the ProfCorp stock under S state law may have to be addressed at the future date.

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## 4. Partnerships

Partnerships are organized and operated under state partnership laws. A partnership is not a separate taxable entity for federal income tax purposes. The partnership's income, deductions, and other tax items flow through to the shareholders, who include the items in their taxable incomes.

A partner's ownership interest in a partnership, typically expressed as a percentage, is set forth in the partnership agreement. A partner may also be issued a certificate of partnership interest. A partnership interest is funded by means of an assignment of the interest from the settlor to the trust.[120] Before preparing an assignment, the attorney should check with the partnership management to ascertain whether the partnership supplies a customized assignment form. A special assignment form is more likely to be used by sizable limited partnerships with numerous investors. A standard assignment will suffice if a special form is not required. A sample assignment of a partnership interest is set forth in Figure 5.40. An assignment of a partnership interest does not cause the dissolution of a partnership unless the partnership agreement expressly provides for a dissolution.[121]

The attorney should take care to comply with any state law requirements that arise in connection with the transfer of a partnership interest. For example, a certificate of limited partnership must typically be filed with the applicable state authority when a limited partnership is formed.[122] Certain specified events, including the admission of a new general partner or the withdrawal of a partner, necessitate the filing of an amended certificate.[123] Thus, if a general partner transfers his or her partnership interest to a revocable living trust, the partnership must file an amended certificate of limited partnership reflecting the withdrawal of the settlor and the admission of the trustee as a general partner. Because the fee for filing an amended certificate may be more than nominal, it is better to advise the client who is a general partner in advance of the specific amount of the fee.

Before making a transfer of a partnership interest to a trust, the attorney should ascertain whether there are any restrictions on the sale, exchange, or other disposition of the interest that would prohibit the transfer. Even if there are no outright prohibitions, there may be conditions, such as the consent of or notice to the other partners, that must be satisfied before a transfer can occur. Restrictions and conditions are generally contained in the partnership agreement.[124]

**FIGURE 5.40**

**Assignment of Partnership Interest**

**ASSIGNMENT OF INTEREST IN XYZ LIMITED PARTNERSHIP**

**FOR VALUE RECEIVED,** the undersigned, **CATHY CLIENT** ("Assignor"), hereby assigns, transfers, and sets over to **CATHY CLIENT, AS TRUSTEE OF THE CATHY CLIENT REVOCABLE TRUST, DATED MAY 1, 2003,** all of Assignor's right, title, and interest in and to Assignor's limited partnership interest in the XYZ Limited Partnership, as evidenced by that certain Partnership Agreement, dated July 1, 1998, consisting of a forty percent (40%) limited partnership interest.

**IN WITNESS WHEREOF,** Assignor has caused these presents to be executed this May 1, 2003.

WITNESSES:

_____ _____

**CATHY CLIENT**

_____

[NOTARY PUBLIC LANGUAGE]

Common conditions on the transfer of partnership interests are the written consent of the other partners or of the general partner and the joinder of the new partner in the partnership agreement. A consent should be prepared that incorporates all the requirements for transfer of the interest. If, in addition to the partners, the partnership is required to consent to a transfer, the partnership should also be made a party to the consent. The attorney should also consider the impact of the transfer of a partnership interest to a trust on the other provisions in the partnership agreement. For example, the agreement is likely to contain provisions that apply upon the death of a partner. The parties may wish expressly to provide in the consent that, in construing provisions of the agreement referring to the death of a partner, the shares owned by the trust will be considered to be owned by the transferor. A sample consent to a transfer of a partnership interest is set forth in Figure 5.41.

## 5. Limited Liability Companies

A limited liability company is organized and operated under a state law expressly providing for such entities. A member's ownership interest in a limited liability company, typically expressed as a percentage, is set forth in the operating agreement. A member may also be issued a certificate of limited liability company interest. An interest in a limited liability company is funded by means of an assignment of the interest from the settlor to the trust. Before preparing an assignment, the attorney should check with the company management to ascertain whether the limited liability company supplies a customized assignment form. A standard assignment is used if a special form is not required.

Before making a transfer of a limited liability company interest to a trust, the attorney should ascertain whether there are any restrictions on the sale, exchange, or other disposition of the interest that would prohibit the transfer. Even if there are no outright prohibitions, there may be conditions, such as the consent of or notice to the other members, that must be satisfied before a transfer can occur. Restrictions and conditions are contained in the articles of organization, the operating agreement, or the applicable state law.[125]

## 6. Sole Proprietorships

When an individual operates a business in the form of a sole proprietorship, all the assets used in the business are owned by the business owner individually. Because a sole proprietorship is not a separate legal entity from the business owner, the funding of the assets of a sole proprietorship into a trust can be considerably more involved than funding stock in a corporation or a partnership interest. Unlike a corporation, a sole proprietorship does not have a certificate evidencing ownership. Similarly, unlike a partnership, a sole proprietorship does not have interests that may be assigned. Rather, the sole proprietorship is an informal conglomerate of various assets, all of which must be retitled from the name of the individual business owner to the name of the trust.

To begin the funding process to a trust, the attorney must have an accurate list of all the assets or categories of assets used in the sole proprietorship. Such assets may

FIGURE 5.41

**Consent to Transfer of Partnership Interest**

**CONSENT TO TRANSFER AND**
**JOINDER IN PARTNERSHIP AGREEMENT**

**THIS CONSENT TO TRANSFER AND JOINDER IN PARTNERSHIP AGREEMENT** is entered into this _____, 2003, by and among **CATHY CLIENT, AS TRUSTEE OF THE CATHY CLIENT REVOCABLE TRUST, DATED MAY 1, 2003** (the "Trust"), **SUE SMITH** ("Smith"), and **JOE JONES** ("Jones").

**WHEREAS, CATHY CLIENT** ("Client"), Smith, and Jones entered into a Partnership Agreement, dated November 1, 1998 (the "Partnership Agreement") with respect to CSJ Partnership, a general partnership; and

**WHEREAS,** the Partnership Agreement imposes certain restrictions on the transfer of partnership interests; and

**WHEREAS,** Client desires to transfer the interest in the Partnership owned by Client to the Trust and Smith and Jones are willing to consent to the transfer according to the provisions of the Partnership Agreement.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants stated in the Partnership Agreement, the parties agree as follows:

1. Smith and Jones consent to the transfer to the Trust of all the thirty-three and one-third percent (33⅓%) interest in the Partnership owned by Client.

2. The Trust joins in the Partnership Agreement and agrees to be bound by all duties, obligations, and conditions stated therein.

3. For purposes of construing the provisions of the Partnership Agreement relating to death, Client shall be treated as the partner for all interest owned by the Trust and the provisions of the Partnership Agreement relating to death of a partner shall apply in the event of death of Client to the interest held by the Trust as if it were held by Client.

FIGURE 5.41 *Continued*

**Consent to Transfer of Partnership Interest**

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Consent and Joinder effective as of the date first above written.

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**CATHY CLIENT, AS TRUSTEE OF THE CATHY CLIENT REVOCABLE TRUST, DATED MAY 1, 2003**

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**SUE SMITH, Partner**

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**JOE JONES, Partner**

include bank accounts, accounts receivable, securities, inventory, goodwill, real property, supplies, materials, work in progress, finished goods, equipment, machinery, tools, furniture, vehicles, trailers, leases, contracts, copyrights, trademarks, patents, licenses, and insurance policies.[126] It is also necessary to ascertain whether any of the assets are mortgaged or pledged as collateral for a loan. The existence of such creditors may affect the business owner's ability to transfer the encumbered assets.[127]

The funding documents required to transfer the sole proprietorship assets to a trust depend on the assets themselves.[128] For example, real property must be transferred by deed. Bank accounts are retitled in the name of the trust by notifying the bank and executing new signature cards. Insurance policies are handled by changing the ownership and the primary beneficiary to the trust. A business owner who leases a building or office may be able to assign the lease to a trust, but the consent of the lessor is probably required. Vehicles and trailers are retitled in the name of a trust at the local motor vehicles agency. After the assets on the list that require a particular funding document have been identified, there will remain a group of tangible and intangible assets for which no specific evidence of title exists, such as goodwill, materials, supplies, and furniture. These remaining assets can be transferred to the trust by assignment. Significant assets should be specifically listed, whereas other assets can be referred to by category. For example, a forklift or welding machine should be specifically identified by serial number, manufacturer, and other descriptive information. In contrast, desks, chairs, computers, telephones, pens, paper, and similar items can be grouped into categories, such as furniture, equipment, and supplies.

After the assets used in a sole proprietorship have been transferred to a trust, the business owner should be advised to take title to any newly acquired assets in the name of the trust rather than in his or her individual name.

When the assets of a sole proprietorship are transferred to a trust, the status of all business licenses, permits, or other required state and county business requirements will need to be reviewed to determine whether they can be assigned. It is likely, however, that the trustee will have to reapply for a business license. If the sole proprietorship did business under a fictitious name, the trustee will also have to reapply with the applicable state authority for use of the name.

## I. BENEFICIAL INTERESTS IN TRUSTS

A client who is the beneficiary of a trust created by another person (the "donor's trust") owns a beneficial interest in that trust. The estate planning attorney should request the client to furnish a copy of the will or trust agreement under which the donor's trust was established. A review of the trust terms will reveal whether the beneficiary is entitled to transfer his or her beneficial interest.

A spendthrift provision is a trust provision that prevents certain voluntary and involuntary transfers of a beneficiary's interest in a trust. A spendthrift provision is designed to protect a beneficiary's interest against the claims of creditors and others. If the donor's trust contains a spendthrift clause that prohibits all voluntary transfers of a beneficiary's interest, then the interest cannot be transferred to the beneficiary's revocable living trust. An example of a spendthrift provision that absolutely prohibits all transfer of a beneficial interest is the following:

> The interest of any beneficiary of this trust shall not be transferred, assigned, or conveyed and shall not be subject to the claims of any creditors of such beneficiary.

A more flexible trust provision prohibits involuntary transfers of a beneficial interest and allows voluntary transfers with the consent of the trustee. An example of a spendthrift provision that allows voluntary transfers of a beneficial interest if the trustee consents is the following:

> No power of appointment or power of withdrawal shall be subject to involuntary exercise, and no interest shall be subject to anticipation, to claims for alimony or support, or to voluntary transfer without the written consent of the trustee or to involuntary transfer in any event.

If the beneficial interest in the donor's trust can be transferred, the beneficiary should assign the interest to his or her revocable living trust.[129] A sample "Assignment of Beneficial Interest in Trust" is set forth in Figure 5.42. The consent of the trustee of the donor's trust to the assignment may be required. A sample "Consent of Trustee to Assignment of Beneficial Interest" is set forth in Figure 5.43. If the consent of the trustee of the donor's trust is not required, the trustee of the donor's trust should be notified of the assignment.

## J. MISCELLANEOUS ASSETS

### 1. Cemetery Lots and Prepaid Funeral Services Contracts

Ownership of a cemetery lot is usually evidenced by a deed or a contract. The attorney should review the client's deed or contract to ascertain what the client owns and how the client's interest can be assigned or otherwise transferred to the trust. The attorney should also review prepaid funeral services contracts to ascertain whether they can be assigned to a trust.

### 2. College Tuition and Savings Programs

Most states offer one or more plans or programs by which parents and grandparents can provide or save for a child's college education. Examples are prepaid tuition programs, college investment plans, and scholarship programs.[130] Whether a client's interest in a college tuition or savings program can be transferred to a revocable living trust depends on the type and terms of the plan. The best approach is to request copies of a client's contract and a recent statement for the account in order to determine the plan in which the client participates and possibly contact numbers. The basic rules governing college plans are usually set forth in a master contract or master covenant. If the master document does not indicate whether a purchaser's interest in a plan can be transferred, then the attorney should consult the representatives for the particular state's program, who may be able to state whether a transfer is possible and, if so, the required procedure.

FIGURE 5.42

**Assignment of Beneficial Interest in Trust**

**ASSIGNMENT OF BENEFICIAL INTEREST IN TRUST**

**FOR VALUE RECEIVED,** the undersigned, **Amy Doe** ("Assignor"), hereby assigns, transfers and sets over to **JOHN DOE AND AMY DOE, AS CO-TRUSTEES OF THE DOE FAMILY TRUST DATED MAY 1, 2003** ("Assignee"), all of Assignor's right, title, and interest in and to Assignor's beneficial interest in and to a trust created under that certain testamentary trust created under Section B of Article XI of the Last Will and Testament of Elizabeth Roe (the "Trust"), the acting trustee of which is Herbert Roe, as Trustee. A copy of the Last Will and Testament of Elizabeth Roe is set forth in the Exhibit "A" attached hereto and incorporated herein by this reference.

**IN WITNESS WHEREOF,** Assignor has caused these presents to be executed this May 1, 2003.

WITNESSES:

_____ _____

**AMY DOE**

_____

[NOTARY PROVISION]

## FIGURE 5.43

## Consent of Trustee to Assignment of Beneficial Interest in Trust

**CONSENT OF TRUSTEE TO ASSIGNMENT OF BENEFICIAL INTEREST IN TRUST**

**THIS CONSENT OF TRUSTEE TO ASSIGNMENT OF BENEFICIAL INTEREST IN TRUST** is made this April 3, 2003, by **HERBERT ROE as Trustee** (the "Trustee") **of the Testamentary Trust Created Under Section B of Article XI of the Last Will and Testament of Elizabeth Roe** (the "Roe Trust").

**WHEREAS,** the Trustee is the acting trustee of the Roe Trust, and Mary Doe (the "Beneficiary") is a present beneficiary of the Roe Trust; and

**WHEREAS,** the terms of the Roe Trust provide that a beneficiary may not voluntarily transfer any interest in the trust without the consent of the Trustee; and

**WHEREAS,** the Beneficiary wishes to transfer the Beneficiary's interest in the Roe Trust to Joe Doe and Mary Doe, as Co-Trustees of the Doe Family Trust Dated May 1, 2003, a revocable living trust in which the Beneficiary is a present beneficiary, and the Trustee is willing to consent to such transfer of beneficial interest.

**NOW, THEREFORE,** the Trustee hereby consents to the assignment of the Beneficiary's beneficial interest in the Roe Trust to Joe Doe and Mary Doe, as Co-Trustees of the Doe Family Trust Dated May 1, 2003.

**IN WITNESS WHEREOF,** the Trustee has duly executed this Consent of Trustee to Assignment of Beneficial Interest in Trust, effective as of the date first above written.

WITNESSES:

_____ _____

**HERBERT ROE, TRUSTEE**

_____

[NOTARY PROVISION]

The following discussion illustrates the funding of investments in two college plans in Florida, but the approach described can be applied to fund investments in any of the various plans around the country. To meet the diverse needs of their residents, many states offer two or more college plans. The procedure for retitling one plan may be different from the procedure for retitling another plan sponsored by the same state.

Florida offers a Prepaid College Plan, by which a purchaser pays a specified amount, depending on a child's age and type of education desired, by lump sum or monthly payments. The beneficiary is guaranteed the cost of tuition at specified Florida colleges and universities. The Prepaid College Plan is governed by a master covenant, which is updated annually and published on the plan's website. Except as expressly provided in the master covenant, the purchaser cannot assign or transfer the contract, or any interest, rights, or benefits under the contract. The master covenant expressly provides that a request to change the purchaser designated on the contract must be in writing, signed by the original purchaser, notarized, and received by the plan board. The request must also be signed by the purchaser to whom the contract is being transferred. When contacted by telephone, a plan representative advised that the procedure outlined in the master covenant can be used to change the purchaser from an individual to the individual's revocable living trust.[131] No special form is provided for changing a purchaser under the plan. When the request is received and processed, the purchaser will be notified that the change was implemented; the new purchaser's name will appear on the next quarterly statement. A sample letter of instruction for requesting a change of the purchaser to a revocable living trust is set forth in Figure 5.44. A sample letter transmitting the letter of instruction to the plan board is set forth in Figure 5.45.

Florida also offers a College Investment Plan, under which an account owner may save for a beneficiary's college education. Funds contributed to the plan grow tax-deferred, and withdrawals for qualified college expenses are exempt from federal income tax. A special form is provided to change the owner of an account under the College Investment Plan. The form specifically permits a trust organized under the law of the United States to be an account owner. A sample completed "Account Owner Change" form is reprinted in Figure 5.46. Note that the form permits the account owner to designate a "survivor" owner who becomes the owner of the account upon the death of the owner of record. Because a trust is the owner, there is no need to make a survivor designation. A sample letter transmitting the "Account Owner Change" form to the College Investment Plan is set forth in Figure 5.47.

### 3. Club Memberships

If a membership in a country club or other membership organization is transferable, it can be assigned to a revocable living trust. The attorney should obtain the original membership certificate from the client, make a file copy of the front and back of the certificate, and then place the certificate in a secure location. Usually, a club will reissue a membership certificate in the name of a trustee upon presentation of the original membership certificate and a letter of instruction from the member.[132] A sample letter of instruction is set forth in Figure 5.48. A sample letter transmitting the letter of instruction and original membership certificate to the club is set forth in Figure 5.49.

FIGURE 5.44

**Letter of Instruction to Change Purchaser under Prepaid College Plan**

**LETTER OF INSTRUCTION**

Florida Prepaid College Board
P.O. Box 6567
Tallahassee, FL 32314-6567

RE: Gail Gordon
Florida Prepaid College Plan
Account Number 1234567890

Ladies and Gentlemen:

Please change the purchaser on the above-referenced account to the following revocable trust:

New Purchaser: **Gail Gordon, as Trustee of the Gail Gordon Trust Dated May 1, 2003**

Title of Trust: Gail Gordon Trust Dated May 1, 2003

Date of Trust: May 1, 2003

Address: 789 Golf Rd.
City, State 12345

Social Security No.: 123-45-6789 (Gail Gordon's)

The notarized signatures of the current purchaser and the purchaser to whom the contract is being transferred appear below.

Dated: May 1, 2003 _____

_____
**Gail Gordon**

[NOTARY PROVISION]

_____
**Gail Gordon, as Trustee of the Gail Gordon Trust Dated May 1, 2003**

[NOTARY PROVISION]

**FIGURE 5.45**

**Transmittal Letter to Prepaid College Plan**

Florida Prepaid College Board
P.O. Box 6567
Tallahassee, FL 32314-6567

RE: Gail Gordon
Florida Prepaid College Plan
Account Number 1234567890

Ladies and Gentlemen:

We represent Gail Gordon in connection with her estate planning. Enclosed is a letter of instruction from Mrs. Gordon requesting that the purchaser under the above-referenced account with the Florida Prepaid College Plan be changed to *"Gail Gordon, as Trustee of the Gail Gordon Trust Dated May 1, 2003."*

Please send confirmation that the requested change was made to us at the above address. Thank you for your attention in this matter.

Yours very truly,

Abe Attorney

Enclosure

cc: Mrs. Gail Gordon (without enclosure)

FIGURE 5.46

**Account Owner Change Form for College Investment Plan**

FLORIDA COLLEGE INVESTMENT PLAN

## Florida College Investment Plan
### Account Owner Change Form

**Customer Information:**

Mary E. Miller
**Name of Current Account Owner**

789 – 456 – 1234
**Daytime Telephone Number**

8 9 6 7 4 5 2 3 0 1 9
**Account Number**

Susan M Miller
**Name of Beneficiary (Student)**

**You may use** this form to change the account owner. This form must be signed by the *current* account owner and be notarized. If the current account owner is deceased, this form must be signed by the survivor or the personal representative/executor/ administrator of the estate and be notarized. The *new* account owner must also sign this form and initial the representations in Section 4. The account owner is responsible for all reporting to the IRS and should retain all necessary receipts, invoices or other documentation. Refer to the *Disclosure Statement* and consult your tax advisor for more information. Return this form to:

**Florida Prepaid College Board**
**P.O. Box 6567**
**Tallahassee, FL 32314-6567**

This account owner change will be processed within 5-7 days of receiving a complete request. For information or assistance, please call 1-800-552-GRAD (4723) and *press prompt* 2.

**1. CURRENT ACCOUNT OWNER AUTHORIZATION AND SIGNATURE**

**Select ONE. I am the:**

✓ **Current Account Owner**

____ **Survivor** – Attach a copy of the death certificate for the current account owner.

____ **Personal Representative/Executor/Administrator of the Estate** – Attach a copy of the death certificate for the current account owner and a copy of the will, letters of administration or other legally binding document appointing you as the personal representative/executor/administrator of the estate.

**By signing below, I certify that I am the account owner, the survivor or the personal representative/executor/ administrator of the estate, and I am therefore authorized to request this account owner change. I certify that all information on this form is true, complete and correct and that I fully understand the requirements and consequences of the action authorized on this form.**

X _____ 5-1-2003
**SIGNATURE – Current Account Owner, Survivor or Personal Representative/Executor/Administrator of the Estate** **DATE**

**NOTARY REQUIREMENT:**

State of _____, County of _____
The foregoing instrument was acknowledged before me this _____ day of _____, _____
by _____ who is personally known to me -or- produced
_____ as proper identification.
Notary Public, State of _____

FIGURE 5.46 *Continued*

**Account Owner Change Form for College Investment Plan**

Mary E. Miller & Mark A. Miller, Co-Trustees of the Mary E. Miller Revocable Trust, Dated May 1, 2003

8 9 6 7 4 5 2 3 0 1 9
Account Number

**2. NEW ACCOUNT OWNER INFORMATION**

The account owner may be an individual who is a citizen or resident of the United States and is 18 years of age or older, or an entity such as a business, organization or trust organized under the laws of the United States.

Name of New Account Owner

987-65-4321
New Account Owner Social Security Number or Tax ID Number

197 Lincoln Ave.
Complete Street Address, including Apartment # or PO Box

City State 12345
City State Zip

789-456-1234
Home Telephone Number

Work Telephone Number

E-Mail Address

**3. NEW SURVIVOR DESIGNATION**

You may designate a new survivor. The survivor becomes the account owner upon death of the account owner in Section 2. The survivor must be an individual who is a citizen or resident of the United States and is 18 years of age or older or an entity such as a business, organization or trust organized under the laws of the United States. The survivor cannot be the same as the account owner. The beneficiary (student) cannot be the survivor unless 18 years old or older.

N/A
Name of New Survivor

New Survivor Social Security Number or Tax ID Number

Complete Street Address, including Apartment # or PO Box

City State Zip

Home Telephone Number

Work Telephone Number

E-Mail Address

**4. NEW ACCOUNT OWNER AUTHORIZATION AND SIGNATURE**

By signing and initialing below, I certify that (1) all the information provided on this application and documentation furnished to the Florida Prepaid College Board with this application are true, complete, and correct, (2) if I am a natural person, I am a citizen or resident alien of the United States, (3) if I am signing on behalf of a business, organization or trust organized under the laws of the United States, I am authorized to make these certifications and representations and to sign this application on behalf of such business, organization or trust, and (4) each of the survivor and the beneficiary is a citizen or resident alien of the United States.

I further certify, acknowledge and represent as follows:

- I have read and understand the Florida College Investment Plan Disclosure Statement and the Participation Agreement, and consent to the policies, terms, and conditions of the Florida College Investment Plan and the Participation Agreement. I understand that the Participation Agreement, which is incorporated into this application by reference, as it relates to enrollment in the Florida College Investment Plan, constitutes a legally binding agreement between me and the Florida Prepaid College Board. I understand that the policies, terms and conditions of the Florida College Investment Plan and Participation Agreement may be amended from time to time without prior notice, and I understand and agree that I will be subject to those amendments. INITIALS: X

- I understand that enrolling in the Florida College Investment Plan and investing my funds in the investment options involves a high degree of risk, account values may fluctuate and there is no guarantee. I understand that I could lose all funds, including any earnings on those funds, deposited in the account, and investments in the Florida College Investment Plan are not deposits or obligations of, or insured or guaranteed by the State of Florida, the United States government, the Florida Prepaid College Board, the Federal Deposit Insurance Corporation, or any other governmental agency or financial institution. INITIALS: X

X
SIGNATURE – New Account Owner
Mary E. Miller, Co-Trustee
DATE 5-1-2003

X
Mark A. Miller, Co-Trustee
5-1-2003

FIGURE 5.47

**Transmittal Letter to College Investment Plan**

Florida Prepaid College Board
P.O. Box 6567
Tallahassee, FL 32314-6567

RE: Gail Gordon
Florida College Investment Plan
Account Number 1234567890

Ladies and Gentlemen:

We represent Gail Gordon in connection with her estate planning. Enclosed is a completed Florida College Investment Plan Account Owner Change Form requesting that the owner under the above-referenced account be changed to *"Gail Gordon, as Trustee of the Gail Gordon Trust Dated May 1, 2003."*

Please send confirmation that the requested change was made to us at the above address. Thank you for your attention in this matter.

Yours very truly,

Abe Attorney

Enclosure

cc: Mrs. Gail Gordon (without enclosure)

FIGURE 5.48

**Letter of Instruction to Transfer Club Membership**

Township Golf and Tennis Club
11 Seabreeze Lane
City, State 12345-6789

RE: Joe Doe and Mary Doe
Membership Certificate Number 7777

Ladies and Gentlemen:

Please reissue the above-referenced certificate in the name of the following revocable living trust:

New Owner: **Joe Doe and Mary Doe, as Co-Trustees of the Doe Family Trust, Dated May 1, 2003**

Title of Trust: Doe Family Trust

Date of Trust: May 1, 2003

Address: 123 Home Lane
City, State 12345-6789

Social Security No.: 123-45-6789 (Joe Doe's)

Dated: _____

_____
**JOE DOE**

_____
**MARY DOE**

**[NOTARY PUBLIC SIGNATURE]**

FIGURE 5.49

**Transmittal Letter to Club**

Township Golf and Tennis Club
11 Seabreeze Lane
City, State 12345-6789

BY CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: Joe Doe and Mary Doe
Membership Certificate Number 7777

Ladies and Gentlemen:

We represent Joe Doe and Mary Doe in connection with their estate planning. On their behalf, we request that you reissue the above referenced membership certificate in the name of "*Joe Doe and Mary Doe, as Co-Trustees of the Doe Family Trust, Dated May 1, 2003.*"

Pursuant to your instructions, enclosed are the following:

1) Original membership certificate stock certificate Number 7777; and

2) Letter of instruction from Joe Doe and Mary Doe requesting the reissuance.

Please send the reissued original stock certificate to us at the above address. Do not hesitate to contact us if you have any questions or require additional information. Thank you for your assistance in this matter.

Yours very truly,

Abe Attorney

Enclosures

cc: Joe Doe and Mary Doe (without enclosures)

## 4. Safe Deposit Boxes

Access to a bank safe deposit box is typically gained through a lease arrangement between the customer and the bank. Depending on the institution, a client's safe deposit box rental agreement may be transferred to a trustee or the trustee can enter into a new agreement for the same box.[133] The settlor should go to the bank to make arrangements for the transfer of the safe deposit box. The bank may ask the settlor as trustee to sign a new rental agreement and signature card. The attorney can prepare a letter of instruction for the settlor to present to the bank so that the trustee can be identified properly. A sample letter of instruction is set forth in Figure 5.50.

Because clients do not typically view safe deposit boxes as assets, they are often overlooked in the trust funding process. The attorney should always specifically ask the client whether there is a safe deposit box. The following example illustrates the practical difficulties that may arise if this important issue is not addressed when the trust is created.

---

### EXAMPLE: Safe Deposit Box Not Retitled

Willa, a widow with adult three children, created a revocable living trust into which she transferred all of her assets, such as her bank accounts, brokerage account, real property, and personal items. Under the terms of the trust, Willa is the trustee of the trust and Sonny, a son, is the successor trustee. Willa also executed a pour-over will under which she named Sonny as her personal representative. Willa had a safe deposit box at a local bank. At the time of her death, the safe deposit box contained the original trust agreement and pour-over will, a canceled life insurance policy, and her deceased husband's wedding band. Willa did not retitle her safe deposit box in the name of the trustee during her lifetime. Under the applicable state law, the bank is required to give the personal representative named in the will limited access to the safe deposit box solely for the purpose of removing the original will. In order to access other items in the box, the personal representative is required to offer the will for probate and be appointed as the personal representative by the probate court. A successor trustee has no authority to enter the box, even to extract the original trust agreement or the ring that Willa previously assigned to the trust along with all her other tangible personal property. If the safe deposit box had been leased in the name of the trust, Sonny, as successor trustee would have been able to open the box and extract the contents, after providing sufficient identification and documentation to the bank officers. Because the box was leased in Willa's individual name, Sonny will be required to offer Willa's will for probate, be appointed as her personal representative, and present his letters of administration to the bank officers. This will result in unnecessary delay and expense, a result that Willa sought to avoid by creating a revocable living trust.

---

FIGURE 5.50

## Letter of Instruction to Transfer Safe Deposit Box Agreement

**LETTER OF INSTRUCTION**

Ladies and Gentlemen:

Please transfer our safe deposit box rental agreement to the following revocable trust:

**Joe Doe and Ann Doe, as Co-Trustees of the Doe Family Trust,**
**Dated May 3, 2003**

If you require any further information, please do not hesitate to contact us.

_____

**JOE DOE**

_____

**ANN DOE**

### 5. Animals

The requirements for transferring ownership to a trust of registered animals or brands vary widely. If ownership of an animal or brand is to be funded into a trust, the estate planning attorney should directly contact the federal organization or state agency responsible for registering the animal or brand to inquire about the requirements for transfer.[134]

The registration and transfer of livestock brands varies from state to state. In Oregon, for example, any change of ownership of a livestock brand must be recorded with the state Brand Office. A special transfer form is available and a transfer fee of $25 applies. In Utah, brands are registered with the Utah Department of Agriculture and Food. Questions about transferring brand registrations are directed to the bureau chief and a $50 transfer fee applies. The California Department of Food and Agriculture's Bureau of Livestock Identification handles brand registrations in California. To transfer ownership of a California brand to a trust, the owner must submit a completed transfer form and pay a $50 transfer fee.

The estate planning attorney may recommend that the registration for purebred pet animals be transferred to the trustee of a revocable living trust. For example, if the pet owner becomes incapacitated, it may be necessary to place the animal with a new owner. If the new owner wishes to continue the registration, the trustee needs the authority to transfer it. Purebred dogs are registered with the American Kennel Club. A supplemental transfer statement is used to transfer a dog registration when a dog has been transferred more than once. The transfer statement is submitted to the organization along with a registration application or registration certificate and the applicable fees. Purebred cats are registered with the Cat Fancy Association or the American Cat Fancier's Association. To transfer a registration to a trustee, the Cat Fancy Association requires a letter of instruction and a copy of the trust agreement establishing the trustee's authority. For an ownership transfer without a cattery name addition, the American Cat Fancier's Association charges a fee of $7 for members or $13 for nonmembers.

## K. LIFE INSURANCE

In order to advise a trust client regarding life insurance on the life of the client,[135] the attorney should review a copy of the insurance policy to determine the type of insurance, the amount of the proceeds payable at the insured's death, and the rights of the insured/owner with respect to the policy. The most commonly encountered types of insurance are term life policies,[136] permanent life policies,[137] and group policies provided through an employer. In the case of most term life and permanent life policies, the ownership of the policy can be transferred to a trust and a trust can be a designated beneficiary. The ownership of a group life insurance benefit generally cannot be transferred to a trust, but a trust can be a designated beneficiary of the policy. In the case of other types of insurance, such as accidental death or disability policies, the attorney will need to review the policy to determine the insured's ability to change the ownership or the beneficiary. Specialized insurance also needs

to be carefully scrutinized. For example, ownership of federal government life insurance policies cannot be transferred, but the insured may change the beneficiary at any time.

For federal estate tax purposes, the proceeds of a life insurance policy are included in the gross estate of the insured if the proceeds are payable to or for the benefit of the insured's estate or if the insured possessed any incident of ownership in the policy at the time of death.[138] The estate planner will evaluate the amount of the life insurance together with a client's other assets in determining whether estate tax planning is necessary. If the estate tax is a factor, then use of an irrevocable life insurance trust for the insurance may be warranted in order to exclude the value of the proceeds from the gross estate. In contrast, if estate tax planning is not needed, then the revocable living trust is the proper vehicle for the life insurance.

In the case of a revocable living trust, two approaches are commonly followed with respect to term life and permanent life policies. Some attorneys transfer ownership of the policy to the insured's revocable living trust and also name the trust as the designated beneficiary.[139] Other attorneys simply leave the insured as the policy owner and designate the revocable trust as the beneficiary. Of the two approaches, the combination change of ownership and change of beneficiary approach is usually preferable in light of the fact that one of the purposes of a revocable living trust is to anticipate the settlor's potential incapacity.[140] If the trust owns the policy and the settlor becomes incapacitated, any decisions concerning the policy can be made by the successor trustee. For example, if the settlor's incapacity necessitates a surrender of the policy or a loan against the policy, the trustee can take the necessary action if the trust owns the policy. Because ownership of a group life insurance benefit typically cannot be changed, the revocable trust should be named as the beneficiary under the policy. It is usually not necessary to surrender the original policy when changing the ownership or the beneficiary.

If an irrevocable trust is created for estate tax purposes, transfer of ownership of an existing term life or permanent life policy is essential. The transfer of an insurance policy to an irrevocable trust is a gift for federal gift tax purposes. Thus, before the policy is transferred, its value should be determined so that the attorney can advise the client whether the gift can be covered by the annual gift tax exclusion. If a new policy is obtained when the irrevocable trust is created, the trustee should be the initial owner of the policy so that there is no need to transfer the policy from the insured to the trust. Whether the policy is existing or new, the trust should also be designated as the recipient of the proceeds at the insured's death.

Ownership and beneficiary changes are made on a form supplied by the company issuing the policy. Some companies take the position that a change of ownership or beneficiary request is not effective until the company's form is received and approved by the company. A company may also request copies of the relevant pages from the trust agreement[141] and a Form W-9, "Request for Taxpayer Identification Number and Certification." A sample completed Form W-9 is reprinted in Figure 3.4. Change of ownership and beneficiary forms can be obtained by request from the insurance company; some companies have the forms available on their websites. For group life insurance provided through employers, the required form can usually be obtained from

the employee benefits department. The forms vary widely in format. Some companies have a single form for changes of ownership and beneficiary. Other companies have separate forms for each change. A sample completed form for changing the owner of a life insurance policy is set forth in Figure 5.51 and a sample completed form for changing the beneficiary under a life insurance policy is set forth in Figure 5.52. If a change of ownership and a change of beneficiary are being effectuated on separate forms, the settlor as owner of the policy should sign the change of ownership form, and then the trustee of the trust, as the new owner, should sign the change of beneficiary form. When submitting the two forms to the insurance company, be sure to request that the change of ownership form be processed prior to the change of beneficiary form. A sample completed "Designation of Beneficiary" form used by the Department of Veterans Affairs, which permits a change of beneficiary but not a change of ownership, is set forth in Figure 5.53.

Special attention is needed when identifying a trust as beneficiary under a life insurance policy. Assume that a settlor wishes to transfer ownership of a life insurance policy to his or her revocable living trust and designate the trust as beneficiary. Normally, the settlor is the initial trustee of his or her revocable living trust. Thus the policy should be retitled in the name of the settlor, as trustee of the trust. Because the settlor, as the insured, will be dead when the proceeds become payable, it does not make sense to designate the settlor, as trustee of the trust, as the beneficiary.[142] Thus the beneficiary may be designated as "the acting trustee" of the revocable living trust. Alternatively, the beneficiary may be designated as the named successor trustee under the trust.

Before transferring an life insurance policy to a trust or naming a trust as beneficiary, the attorney should consider the impact of the transfer or designation on any state law providing special protection of life insurance policies or proceeds. For example, a state law may exempt the cash surrender value of life insurance policies issued on the lives of state residents from the claims of creditors.[143] Other state statutes exempt life insurance proceeds payable to a designated beneficiary other than the insured's estate.[144] It may be necessary to weigh the potential need for exemption of the policy or proceeds against the advantages of making the trust as owner and beneficiary before proceeding with the changes.

## L. ANNUITIES

A commercial annuity is a contract between an individual and an insurance company under which the individual receives a series of immediate or deferred periodic payments in exchange for the payment of a single premium payment or series of payments.[145] If various requirements are satisfied, special income tax treatment is afforded annuities and annuity payments. First, if the annuity is deferred, income tax is deferred on the earning within the annuity until the annuitant receives the payments. Second, a portion of every annuity payment represents a nontaxable return of principal to take into account the annuitant's investment in the contract.[146] Annuities may provide guaranteed death benefits payable upon the death of the annuitant for which a beneficiary should be designated.

When a trust client owns an annuity, the ideal strategy is for the trust to be

**FIGURE 5.51**

**Form to Transfer Ownership of Policy**

EQUITABLE

**REQUEST FOR CHANGE OF OWNER**

The Equitable Life Assurance Society
PO Box 1047
Charlotte, NC 28201-1047
800-855-5100
8:00 a.m. – 8:00 p.m. Eastern Time

**DO NOT RETURN THE POLICY WITH THIS REQUEST**

***BEFORE COMPLETING THIS REQUEST, PLEASE READ THE INSTRUCTIONS ON THE COVER PAGE AND THE PROVISIONS ON THE FOLLOWING PAGES OF THIS FORM.***

POLICY NUMBER(S) LUS3WEG

INSURED/ANNUITANT'S NAME Cathy (First) (Middle) Client (Last)

If the proposed Owner is a Trust, the date of the Trust Agreement or the number of the Trust must be furnished. Our liability under the policy passes when we make payment to a Trustee or successor designated herein.

**CHANGE OF OWNER:** ☒ Yes ☐ No ☐ Transfer as Gift ☐ Transfer for Consideration $ _____

FULL NAME OF NEW OWNER AND RELATIONSHIP TO INSURED/ANNUITANT

Cathy (First) Client, Trustee, (Middle) Cathy Client Revocable Trust, dtd 5-1-2003 (Last) Trust (Relationship)

_____ (First) _____ (Middle) _____ (Last) _____ (Relationship)

OR

_____ (Organization or Other) _____ (Relationship)

_____ (Successive Owner) _____ (Relationship)

**THIS CHANGE IS SUBJECT TO THE PROVISIONS ON THE FOLLOWING PAGES.**

**Owner's Address:** If applicable, check and complete.

☒ Address of NEW OWNER is: ☐ Change address of SAME OWNER to: _____

C/O _____

123 Flamingo Dr (Number and Street) (Apt./Suite/Bldg.)

City (City) State (State) 12345-6789 (Zip + 4 Code)

X _____ SIGNATURE OF PRESENT OWNER(S)
(If present Owner is not the Insured/Annuitant, see signature requirements on cover page.)

Date: 05/01/2003 (Month / Day / Year)

**SUBSTITUTE FORM W-9 – FOR NEW INDIVIDUAL OWNER ONLY**

Federal Law requires that you provide the following Data (see reverse side for explanation):

**PART ONE** – Enter your taxpayer identification number in the appropriate box. For most taxpayers, this is the Social Security Number. For most Corporations and Trusts, this is the Employer Identification Number.

Social Security # [illegible] OR Employer I.D. Number ___-_____

**PART TWO** – Check the box if you are NOT subject to backup withholding under the provisions of section 3406(a)(1)(c) of the Internal Revenue Code.... ☐

**CERTIFICATION** – Under penalties of perjury, I certify that this information is true, correct and complete.

_____ Date: 05/01/2003 (Month / Day / Year)

Signature of New Owner Cathy Client, Trustee

**Important:** Please Print Clearly in Blue or Black Ink.

**FOR EQUITABLE/EQUITABLE OF COLORADO USE ONLY**

The Equitable/Equitable of Colorado certifies that this change has been recorded.

Date: _____ 20 _____ By: _____

THIS COPY TO BE ATTACHED TO AND RETAINED WITH POLICY

REV. 3/02) E3985

FIGURE 5.52

**Form to Change Beneficiary under Policy**

EQUITABLE

The Equitable Life Assurance Society
PO Box 1047
Charlotte, NC 28201-1047
888-855-5100
8:00 a.m. – 9:00 p.m. Eastern Time

*BEFORE COMPLETING THIS PAGE, PLEASE READ THE INSTRUCTIONS AND THE PROVISIONS ON PAGE 2*

**beneficiary request for**

CATHY CLIENT
Insured's Name (First, Middle, Last)

CATHY CLIENT TTEE UADTD 5/1/03
Owner's Name (First, Middle, Last)

123456789 — Owner's Social Security or Employer ID #
3216549876 — Telephone # w/Area Code
0900 — Best time to call ☒ am ☐ pm

**beneficiary change request for the following policy numbers**

L453666

**new beneficiary request**

| Full Name of New Beneficiary | Address | Telephone # | Relationship | Soc. Sec./EID # |
|---|---|---|---|---|
| the Cathy trustee of the Cathy Client Revocable Trust, dtd 5-1-2003 | 123 Flamingo Dr. City, State 12345 | 321-654-9876 | N/A | 123-45-6789 |

**special instructions:** Unless otherwise requested, if two or more persons are named as beneficiaries, those surviving the Insured will share equally. See page 2 for instructions and sample designations.

**THIS CHANGE IS SUBJECT TO THE PROVISIONS ON PAGE 3**

For other than Corporate or Trust Owned Policies:

Signature of Owner — Date — Telephone

Signature of Assignee — Date — Telephone

For Corporate or Trust Owned Policies:

Name of Corporation or Trust: Cathy Client Revocable Trust, Dated May 1, 2003

Signature of Officer(s) — Date — Title of Officer(s)

X — 5-1-2003 — Trustee

Signature of Trustee(s) Cathy Client — Date — Title of Trustee(s)

**FOR EQUITABLE USE ONLY**

The Equitable certifies that this change has been recorded.

Date: _____ By: _____

E3414

# FIGURE 5.53

## Designation of Beneficiary/Government Life Insurance

*IMPORTANT - SEE INSTRUCTIONS ON REVERSE*

OMB Approved No. 2900-0000
Respondent Burden: 10 minutes

**Department of Veterans Affairs** — **DESIGNATION OF BENEFICIARY GOVERNMENT LIFE INSURANCE**

DO NOT WRITE IN SPACE BELOW - FOR VA USE ONLY

| ENTERED BY VA | DATE RECORDED | SIGNATURE OF VA INSURANCE OFFICIAL |
|---|---|---|
| | | |

1A. NAME OF INSURED AND MAILING ADDRESS FOR INSURANCE PURPOSES *(Type or print)*

Cathy Client
*(First, middle, last name)*

123 Flamingo Dr.
*(Number and street or rural route)*

City, State 12345-6789
*(City or P.O., State and ZIP Code)*

2A. INSURANCE FILE NUMBER: F 534786

2B. SOCIAL SECURITY NUMBER: 123-45-6789

3. DAYTIME TELEPHONE NUMBER *(Include Area Code)*: 321-654-9876

1B. IS THIS A CHANGE OF ADDRESS FOR YOUR INSURANCE ☐ YES ☒ NO

4. BENEFICIARY DESIGNATION

| A. SHOW FULL NAME AND ADDRESS OF EACH BENEFICIARY ENTERED IN THE PRINCIPAL AND CONTINGENT BENEFICIARY AREAS BELOW | B. BENEFICIARY'S SOCIAL SECURITY NO. *(If known See instruction No. 5 on reverse)* | C. RELATIONSHIP TO INSURED | D. SHARE TO EACH *(Use fractions, such as 1/2, 2/3, or "all")* | E. OPTION FOR EACH |
|---|---|---|---|---|
| **PRINCIPAL** | | | | |
| The acting trustee of the Cathy Client Revocable Trust, dated May 1, 2003 | 123-45-6789 | Trust | All | LUMP SUM |
| | | | | LUMP SUM |
| | | | | LUMP SUM |
| | | | | LUMP SUM |
| OR TO SURVIVOR(S) | | | | |
| **CONTINGENT** *(Person(s) who get proceeds if all of the Principal Beneficiaries die before the insured. If none, write "none")* | | | | |
| N/A | | | | LUMP SUM |
| | | | | LUMP SUM |
| | | | | LUMP SUM |
| | | | | LUMP SUM |
| OR TO SURVIVOR(S) | | | | |

5. REMARKS *(Include any additional information which will clarify your intent regarding the payment of your insurance. Also, list the policy number of any policy on which the beneficiary is not to be changed)*

I understand that this change cancels all prior beneficiary and option selections; and unless indicated in Item 5, Remarks, this change applies to all Government Life Insurance policies under the above file number.

| 6. SIGNATURE OF INSURED *(Do not print)* | 7. DATE |
|---|---|
| X | May 1, 2003 |

8. NAME AND ADDRESS OF WITNESS *(Type or print)*

**If you have any questions concerning designating a beneficiary, call us toll free at 1-800-669-8477.**

VA FORM FEB 2003 **29-336** EXISTING STOCKS OF VA FORM 29-336, JUN 2001, WILL BE USED.

named the owner and either the primary or contingent beneficiary under the annuity contract.[147] If the trust owns the annuity and the settlor becomes incapacitated, any decisions concerning the annuity can be made by the successor trustee. It must be stressed, however, that the terms, features, benefits, and options under annuity contracts vary considerably. For example, some companies simply do not permit an annuity to be retitled in the name of a trust and other companies offer that flexibility. Concerning beneficiaries, additional income tax deferral opportunities may be available if a spouse or individual family member is named as beneficiary.[148] If such an option is available and important to the settlor, a common approach is to name the surviving spouse as primary beneficiary and the trust as contingent beneficiary. To find out what is permissible under a particular contract, the safest approach is for the attorney to review the annuity contract and to discuss the available options with the issuer or with the settlor's broker or other financial advisers through which the annuity was purchased. Following this review and consultation, the attorney can advise the settlor how to proceed with confidence that no steps have been taken that would unknowingly deprive the settlor of future or current benefits or options.

Ownership and beneficiary changes to annuity contracts should be made on forms supplied by the issuer of the annuity. Change of ownership and beneficiary forms can be obtained by request from the issuer; some companies have the forms available on their websites. A sample completed form used to change ownership of an annuity to a revocable living trust is set forth in Figure 5.54. If a change of annuity ownership and a change of beneficiary are being effectuated on separate forms, the settlor as owner of the policy should sign the change of ownership form, and then the trustee of the trust, as the new owner, should sign the change of beneficiary form. When submitting the two forms to the company, be sure to request that the change of ownership form be processed prior to the change of beneficiary form. A sample completed form used to designate new beneficiaries under an annuity, without a change of ownership, is set forth in Figure 5.55.

Special attention is needed when identifying a trust as beneficiary under an annuity. Assume that a settlor wishes to transfer ownership of an annuity to his or her revocable living trust and designate the trust as primary or contingent beneficiary. Normally, the settlor is the initial trustee of his or her revocable living trust. Thus the annuity should be retitled in the name of the settlor, as trustee of the trust. Because the settlor, as the annuitant, will be dead when the death benefit under the annuity becomes payable, it does not make sense to designate the settlor, as trustee of the trust, as the beneficiary.[149] Thus the beneficiary may be designated as "the acting trustee" of the revocable living trust. Alternatively, the beneficiary may be designated as the named successor trustee under the trust.

Before transferring ownership of an annuity to a trust, the attorney should consider the impact of the transfer on any state law providing special protection of proceeds of annuity contracts. For example, a state law may exempt annuity contracts or the benefits or proceeds thereof from the claims of creditors.[150] It may be necessary to weigh the potential need for exemption of the proceeds against the advantages of making the trust as owner before proceeding with the change of ownership.

FIGURE 5.54

**Form to Transfer Ownership of Annuity**

STATE LIFE INSURANCE COMPANY, INC.

123 Main Street
City, State 12345

(800) 987-6543
(321) 654-0987

*For instructions on completing this form, see page 3 or contact your Service Representative.*

## CHANGE OF OWNERSHIP FORM

**Contract Number:** 6843746

**Annuitant Name:** Cathy Client

**Part I: Current Owner Information:**

**Owner Name:** Cathy Client **Owner SSN:** 123-45-6789

**Joint Owner Name:** N/A **Joint Owner SSN:** _____

**Owner Daytime Phone:** 321-654-9876 **Owner Evening Phone:** 321-654-9876

*Note: The current owner and joint owner (if applicable) are advised that the transfer of ownership of an annuity may have potential tax consequences that should be discussed with a tax advisor before completing Part II.*

**Part II: New Owner Information:**

**Owner Name:** Cathy Client, Trustee of the Cathy Client Revocable Trust dtd 5-1-2003 **Owner SSN:** 123-45-6789

**Address:** 123 Flamingo Dr., City, State 12345-6789

**Joint Owner Name:** N/A **Joint Owner SSN:** _____

**Address:** _____

**Daytime Phone:** 321-654-9876 **Evening Phone:** 321-654-9876

FIGURE 5.54 *Continued*

**Form to Transfer Ownership of Annuity**

**CHANGE OF OWNERSHIP FORM** (continued)

Contract Number: 684377G

**Part III: Signatures:**

A SIGNATURE GUARANTEE IS REQUIRED FOR ALL SIGNATURES.

I have read, understand, and authorize the changes requested above. I, the existing owner, acknowledge that all rights and privileges of the contract will be relinquished in favor of the new owner. I, the new owner, accept all rights and privileges of the contract.

X 5/1/2003 Medallion Signature Guarantee:
Existing Owner Date [STAMP]
Cathy Client

Medallion Signature Guarantee:
Existing Joint Owner Date [STAMP]

X 5/1/2003 Medallion Signature Guarantee:
New Owner Date [STAMP]
Cathy Client, Trustee

Medallion Signature Guarantee:
New Joint Owner Date [STAMP]

**Part IV: Additional Provisions:**

1. The change of ownership will be effective on the date signed by the existing owner and joint owner (if applicable), subject to the Company's approval and acceptance.

2. The change of ownership effectuated by this form does not change the existing designated beneficiary. The new owner may designate a new beneficiary by completing a Change of Beneficiary Form.

FIGURE 5.55

**Form to Change Beneficiary of Annuity**

STATE LIFE INSURANCE COMPANY, INC.

123 Main Street
City, State 12345

(800) 987-6543
(321) 654-0987

*For instructions on completing this form, see page 3 or contact your Service Representative.*

## CHANGE OF BENEFICIARY FORM

Contract Number: 547936AG

Annuitant: Mark A. Miller

**Part I: Owner Information:**

Owner Name: Mark A. Miller Owner SSN: 123-45-6789

Joint Owner Name: N/A Joint Owner SSN: _____

Owner Daytime Phone: 897-546-1432 Owner Evening Phone: 897-546-1432

**Part II: Primary Beneficiary:**

Provide the information requested below for each primary beneficiary. If more than one beneficiary is named, they will receive equal shares unless different percentages are indicated.

| Name | Relationship | Birth Date | SSN | % Designated |
|---|---|---|---|---|
| Mary E. Miller | Spouse | 2/6/43 | 987-65-4321 | 100% |

FIGURE 5.55 *Continued*

**Form to Change Beneficiary of Annuity**

**CHANGE OF BENEFICIARY FORM** (continued)

Contract Number: 547936 AG

**Part III: Contingent Beneficiary:**

Provide the information requested below for each contingent beneficiary. If more than one beneficiary is named, they will receive equal shares unless different percentages are indicated.

| Name | Relationship | Birth Date | SSN | % Designated |
|---|---|---|---|---|
| the acting trustee of the Mark A. Miller Trust, dated Aug 1, 2003 | Trust | N/A | | 100% |

**Part IV: Signatures:**

X _____ 8/1/2023 _____ ^ _____

Owner Mark A Miller — Date — Witness

_____ _____ _____

Joint Owner — Date — Witness

**Part V: Additional Provisions:**

1. The change of beneficiary will be effective on the date signed by the owner and joint owner (if applicable), subject to the Company's approval and acceptance.

2. Upon the effective date of this change of beneficiary, all prior beneficiary designations are revoked.

## M. RETIREMENT PLANS

### 1. Qualified Retirement Plans

Qualified retirement plans are eligible for special income tax treatment in that the plan itself is exempt from income taxation, contributions are deductible by employers, income tax is deferred on allowable contributions, and, even when taxable distributions to a plan participant must begin, opportunities exist for taking minimum distributions over a participant's lifetime that will permit even more income tax deferral.[151] Qualified retirement plans include stock bonus, pension, and profit-sharing plans described in Section 401(a) of the Internal Revenue Code (IRC), annuity contracts described in IRC Section 403(a), annuity contracts and custodial accounts described in IRC Section 403(b), individual retirement accounts (IRAs) described in IRC Section 408, and Roth IRAs described in IRC Section 408A.

A plan participant has a beneficial interest in a qualified retirement plan that is generally not assignable.[152] Thus a participant's interest in a qualified retirement plan is never transferred to a trust.[153] The decision of whether to name a trust as beneficiary under a qualified retirement plan may require an analysis of several interrelating factors, including income and estate tax considerations as well as practical family concerns. Plan participants should seek advice from an attorney or other professional well versed in the technical rules concerning required minimum distributions and designated beneficiaries before naming or changing primary and contingent beneficiaries under a qualified plan.

To confine the advantages of income tax deferral in qualified retirement plans within reasonable limits, a complex set of rules dictates required minimum distributions to the participant or his or her beneficiaries.[154] A plan participant must begin taking distributions from a qualified plan not later than the required beginning date.[155] The required beginning date for a participant in a qualified plan is April 1 of the calendar year following the later of: (a) the calendar year in which the participant attains age seventy and one-half years; or (b) the calendar year in which the participant retires from employment with the employer maintaining the plan.[156] The required beginning date for an IRA owner is April 1 of the calendar year in which the individual attains age seventy and one-half years.[157] The distribution may be in the form of a lump sum or in installment payments over: (a) the life of the participant; (b) the joint lives of the participant and a designated beneficiary; (c) the life expectancy of the participant; or (d) the joint life and last survivor expectancy of the employee and the designated beneficiary.[158]

If a participant began receiving distributions at the required beginning date and dies before receiving the entire interest under the plan, the distribution period for the remainder depends on whether there is a designated beneficiary.[159] If the participant had a designated beneficiary, the distribution period is the longer of: (a) the remaining life expectancy of the designated beneficiary; or (b) the remaining life expectancy of the participant.[160] If there was no designated beneficiary, the distribution period is determined with reference to the remaining life expectancy of the participant.[161]

If a plan participant dies before the required beginning date, there are three po-

tential options for distributing the decedent's interest under the plan: the five-year rule; the life expectancy rule where there is a nonspouse beneficiary; and the life expectancy rule where the surviving spouse is the sole designated beneficiary. Under the five-year rule, the interest must be distributed within five years of the participant's date of death.[162] The five-year rule applies when there is no designated beneficiary.[163] Under the life expectancy rule, any portion of the interest payable to a designated beneficiary may be distributed over the life of the beneficiary or over a period not extending beyond the life expectancy of the beneficiary.[164] If the designated beneficiary is not the employee's spouse, distributions must commence on or before the end of the calendar year immediately following the calendar year in which the participant died.[165] Additional deferral opportunities are present when the sole designated beneficiary is the participant's surviving spouse. Distributions to the spouse must commence on or before the later of: (a) the end of the calendar year immediately following the calendar year in which the participant died; or (b) the end of the calendar year in which the participant would have attained age seventy and one-half years.[166]

The required minimum distribution rules described above offer more liberal provisions for distributions to surviving spouses than for distributions to other individuals or trusts. Moreover, a surviving spouse may elect to roll over a distribution from the deceased spouse's qualified plan or individual retirement account into his or her own individual retirement account or may treat the deceased spouse's individual retirement account as the surviving spouse's own.[167] Because of the enhanced opportunities for income tax deferral when a participant's surviving spouse is the designated beneficiary, it is common practice for married participants to name the spouse as the primary beneficiary. A contingent beneficiary, including a trust, may be named as the contingent beneficiary under the plan. If the spouse predeceases the participant, or if the spouse survives the participant and disclaims the interest under the plan, the named contingent beneficiary will be treated as the designated beneficiary.[168] If a participant chooses to name a primary beneficiary other than the spouse, the spouse's consent is usually required.[169]

On the other hand, in some contexts an estate planning client may decide that estate tax or personal considerations dictate naming a trust as a primary plan beneficiary notwithstanding the potential income tax savings from naming a surviving spouse as the primary beneficiary. For example, a participant with children from a prior marriage may wish to use the retirement benefits to provide for the children, while leaving his or her residence and personal effects to the surviving spouse. In this situation, the participant can either designate as primary beneficiary the children in equal shares or a trust for the benefit of his or her lineal descendants. The important point is that the estate planning attorney advise the client regarding the options and their consequences before a beneficiary designation is made.

Before naming a trust as beneficiary under a qualified plan, the estate planning attorney should be familiar with some special rules applicable to trust beneficiaries under the minimum distribution rules.[170] As discussed above, the distribution options for benefits under qualified retirement plans depend in part upon whether a designated beneficiary was specified by the participant. The term "designated ben-

eficiary" is defined as an individual designated as beneficiary by the participant.[171] Although the literal definition would prohibit a trust from being a designated beneficiary, a special rule applies under which the beneficiaries of a trust named as a beneficiary under a plan are treated as having been designated as beneficiaries by the participant for purposes of determining the required minimum distributions under the plan.[172] In effect, the Internal Revenue Service looks through the trust to find individual trust beneficiaries to serve as designated beneficiaries. Trust beneficiaries can be treated as designated beneficiaries if the following requirements are met:[173]

1) The trust is a valid trust under state law (or would be a valid trust but for the fact that there is no corpus);
2) The trust is irrevocable or will by its terms become irrevocable upon the death of the employee;
3) The beneficiaries of the trust who are beneficiaries of the trust's interest in the plan benefits are identifiable from the trust instrument;[174] and
4) The required documentation has been provided to the plan administrator.[175]

If a person other than an individual is named as a trust beneficiary, then the participant will be treated as having no designated beneficiary, even if there are also individuals designated as beneficiaries.[176] If, however, the trust beneficiary of a trust named as beneficiary under a plan is another trust, the beneficiaries of the other trust will be treated as being designated as beneficiaries of the first trust, and thus as designated beneficiaries of the participant, so long as the trust requirements are satisfied with respect to both the first trust and the other trust.[177]

If a plan participant names a trust as beneficiary under a qualified retirement plan and the trust requirements set forth above are not satisfied, then the participant will be treated as having no designated beneficiary and potential opportunities for income tax deferral are forfeited.[178] Conversely, if the trust requirements are satisfied, beneficiaries of the trust are considered designated beneficiaries of the participant for purposes of determining the required minimum distributions. Because most trusts have more than one beneficiary and the interests of the beneficiaries may be structured in many fashions, it is important to determine whose life expectancy applies in determining the required minimum distributions.

The general rule is that, if more than one beneficiary is designated as a beneficiary of a qualified plan benefit, the designated beneficiary with the shortest life expectancy is treated as the designated beneficiary for purposes of determining the applicable distribution period.[179] Not all trust beneficiaries are taken into account for purposes of determining whose life expectancy is the shortest. It is clear that any trust beneficiary having a present interest in the trust income or principal is taken into account. With regard to beneficiaries with future interests, the rules distinguish between a beneficiary with a contingent interest and a beneficiary who is merely a potential successor to the interest of another beneficiary upon the death of the other beneficiary. A contin-

gent beneficiary is taken into account, whereas the mere potential successor to another's interest is disregarded.[180]

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**EXAMPLE: Beneficiaries with Contingent Interests**

Hal has an account under a qualified retirement plan established and maintained by his employer. Hal died in 2004 at the age of fifty-five, survived by his wife Wendy (age fifty) and their three children (ages twenty, twenty-four, and twenty-eight). Prior to his death, Hal named a testamentary trust to be established under the terms of his will as the beneficiary of all amounts payable from his retirement account after his death. Under the terms of the trust, all income is payable annually to Wendy and no one has the power to appoint principal to anyone other than Wendy. Hal's children are the remainder beneficiaries of the trust; no person other than Wendy and the children has a beneficial interest in the trust. The trust gives Wendy the power to compel the trustee to withdraw annually from Hal's retirement plan an amount equal to the income earned on the assets in the account during the calendar year and to distribute that amount through the trust to Wendy. If Wendy exercises the withdrawal power, the trustee must withdraw from Hal's account the greater of the amount of income earned in the account during the calendar year or the required minimum distribution. Under the terms of the trust, however, only the portion of the plan distribution received by the trustee equal to the income earned by Hal's account in the plan is required to be distributed to Wendy (together with any other trust income). If the required minimum distribution is greater than the income from the account for a calendar year, Wendy will receive the income amount and the excess will be accumulated in the trust for the benefit of Hal's children. Assume that all of the trust requirements are satisfied so that the beneficiaries of the trust are treated as designated beneficiaries under the plan. Even though the children's access to their interests is delayed until after Wendy's death, the children are designated beneficiaries taken into account in determining the distribution period. Because four trust beneficiaries are treated as designated beneficiaries, Wendy, the designated beneficiary with the shortest life expectancy will be used to determine the distribution period.[181] Because Wendy is not the sole designated beneficiary, however, distributions from the plan must commence on or before the end of the calendar year immediately following the calendar year of Hal's death.[182]

**EXAMPLE: Beneficiaries as Potential Successors to Another's Interest**

Assume the same facts as in the foregoing example, except that the trust provides that all amounts distributed from Hal's retirement account during

Wendy's lifetime will be paid directly to Wendy upon receipt by the trustee of the testamentary trust. Under this scenario, no amounts distributed from the retirement account during Wendy's lifetime will be accumulated for the benefit of the children. Thus, the children, as residuary beneficiaries, are mere potential successors to Wendy's interest in the retirement account. Because the children are not taken into account as designated beneficiaries for purposes of determining the distribution period, the account can be distributed using Wendy's life expectancy to determine the distribution period and, under the special rule applicable when a spouse is the sole designated beneficiary, distributions need not begin until the end of the calendar year in which Hal would have attained age seventy and one-half years.[183]

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Beneficiary changes under qualified retirement plans should be made on forms supplied by the trustee or administrator of the plan. Change of beneficiary forms can be obtained by request from the trustee, administrator, or employer; some companies have the forms available on their websites. A sample completed form used to designate a revocable living trust as contingent beneficiary under an individual retirement account is reprinted in Figure 5.56.

Special attention is needed when identifying a trust as beneficiary under a qualified retirement plan. Normally, the settlor is the initial trustee of his or her revocable living trust. Assets funded into the trust are retitled in the name of the settlor, as trustee of the trust. Because the settlor, as the plan participant, will be dead when and if the beneficiary designations under the plan take effect, it does not make sense to designate the settlor, as trustee of the trust, as the beneficiary.[184] Thus the beneficiary may be designated as "the acting trustee" of the revocable living trust. Alternatively, the beneficiary may be designated as the named successor trustee under the trust.

## 2. Nonqualified Retirement Benefits

Retirement benefits provided by an employer to an employee that do not meet the stringent requirements set forth in the Internal Revenue Code for qualified plans may not offer the income tax advantages of qualified plans but are valuable assets for retirement and estate planning purposes. Nonqualified retirement benefits include deferred compensation plans and contractual death benefits. Because the nonqualified retirement plans vary considerably, the best approach is for the attorney to review a copy of the plan or other governing document to ascertain the employee's rights with respect to designating benefits payable at the employee's death. Beneficiary changes under nonqualified retirement plans should be made on forms supplied by the employer. The same considerations discussed above in connection with identifying the trustee as the beneficiary of death benefits under qualified plans apply with respect to designating a trustee as beneficiary under nonqualified plans.[185]

FIGURE 5.56

## Form to Change Beneficiary of Individual Retirement Account

# DESIGNATION OR CHANGE OF BENEFICIARY FORM

## State Farm Funds Individual Retirement Accounts

This form is used to add or change a beneficiary of your IRA. If you wish to establish a transfer on death beneficiary on your non-tax qualified State Farm Mutual Fund account, please call and request a *Designation of Transfer on Death Beneficiary Form.*

I hereby revoke any prior *Designation or Change of Beneficiary Forms* and name the following as the beneficiary(ies) of this IRA, subject to my right to change this designation as provided in the *Custodial Account Agreement* and to the provisions on the reverse side of this form.

If you have any questions or additional information before completing this form, please call 1-800-447-4930.

### 1 Participant Information

Name Mark (First) A. (M.I.) Miller (Last) Social Security # 123-45-6789

Address 197 (Street) Lincoln Ave., City (City) State (State) 20202 (ZIP Code)

Account Number 72-501432

### 2 Primary Beneficiary(ies)

| Name and Social Security # | Address | Relationship To Participant | Birth Date |
|---|---|---|---|
| a. Mary E. Miller<br>SS # 987-65-4231 | 197 Lincoln Ave. (Street)<br>City, State 20202 (City, State, ZIP Code) | Spouse | 2/6/1943 (Month/Day/Year) |
| b. | (Street)<br>(City, State, ZIP Code) | | / / (Month/Day/Year) |
| SS # | | | |
| c. | (Street)<br>(City, State, ZIP Code) | | / / (Month/Day/Year) |
| SS # | | | |

### 3 Secondary Beneficiary(ies) (in event there are no Primary Beneficiaries surviving)

| Name and Social Security # | Address | Relationship To Participant | Birth Date |
|---|---|---|---|
| a. the acting trustee<br>~~SS#~~ of the Mark A. | 197 Lincoln Ave. (Street)<br>City, State 20202 (City, State, ZIP Code) | Trust | / / N/A (Month/Day/Year) |
| b. Miller Trust, dated<br>~~SS#~~ Aug. 1, 2003 | (Street)<br>(City, State, ZIP Code) | | / / (Month/Day/Year) |
| c. | (Street)<br>(City, State, ZIP Code) | | / / (Month/Day/Year) |
| SS# | | | |

### 4 Signatures

X
Participant's Signature

August 1, 2003
Date

Signature of Witness Other Than Beneficiary - Required
(Forms lacking a witness will be returned.)

N/A
Signature of Spouse, if applicable
(Review # 1-d in General Provisions)

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## NOTES

1. RESTATEMENT (THIRD) OF TRUSTS § 40 (2003). A New York statute expressly provides that every estate in property can be disposed of by lifetime trust. N.Y. ESTATES, POWERS, AND TRUSTS LAW § 7-1.16.

2. RESTATEMENT (THIRD) OF TRUSTS § 40, cmts. b and d (2003). *See also* Bogert & Bogert, THE LAW OF TRUSTS AND TRUSTEES § 142 (rev. 2d ed. 1984).

3. *E.g.*, *Newton v. Wimsatt*, 791 S.W. 2d 823 (Mo. App. 1990) (execution of a deed from the settlor to herself, as trustee of a revocable living trust, was sufficient to transfer title to real property to the trust); *Golleher v. Horton*, 715 P. 2d 1225 (Ariz. App. 1985) (transfer of real property by deed from settlors to trustee was sufficient to establish the trust res requirement and was also evidence of the settlors' intent to create a trust). *See Flinn v. Van Devere*, 502 So. 2d 454 (Fla. App. 1987) (revocable living trust established by settlor did not contain certain real property because the settlor did not convey title to the realty by deed to the trustees); *Dahlgren v. First National Bank*, 580 P. 2d 478 (Nev. 1978) (where a settlor created a trust, named a third party as trustee, but did not transfer title to a condominium to the trustee before her death, the condominium could not be distributed to the beneficiary named in the trust because the condominium was not property of the trust). *See also Austin v. City of Alexandria*, 574 S.E. 2d 289, 292-93 (Va. 2003) (where settlor transferred by deed real property from himself individually to himself, as trustee, of a revocable living trust, and where settlor later transferred the same property from himself individually to a charitable remainder unitrust, the property remained an asset of the revocable trust because the settlor had no interest to convey individually). If the owner of property declares himself or herself trustee of realty for the benefit of another, a court may conclude that the property is subject to the trust notwithstanding the absence of a formal transfer by deed. *E.g.*, *Parker v. Powell*, 100 Cal. Rptr. 2d 501 (Ct. App. 2000) (where a husband and wife declared themselves co-trustees of a revocable living trust, jointly owned real property listed on a trust property schedule was considered trust property even though the property was not formally transferred to the trust by a recorded deed); *Brevard County v. Ramsey*, 658 So. 2d 1190 (Fla. App. 1995) (where a husband and wife declared themselves co-trustees of real property for the benefit of their wholly-owned corporation, the trust was valid even though the property was not formally transferred to the trust by a recorded deed); *Heggstad v. Heggstad*, 20 Cal. Rptr. 2d 433 (Cal. App. 1993) (where settlor in writing declared himself trustee of his interest as a tenant in common in real property but did not execute a deed conveying the property to himself as trustee, the interest was subject to the trust and not part of the settlor's estate upon his death); *Wilkerson v. McClary*, 647 S.W. 2d 79 (Tex. App. 1983) (where a settlor declared herself trustee of certain assets, including realty, a valid trust was created even though the property was not retitled in the trustee's name).

4. BLACK'S LAW DICTIONARY.

5. Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 141 (1998); Nash, "Funding," ADMINISTRATION OF TRUSTS IN FLORIDA § 11.3 (3d ed. 2001). Notwithstanding the recommendation in the text to use a warranty deed to transfer title to real property to a revocable living trust, use of quitclaim deeds for this purpose is common. *See* Schmidt, "How to Fund a Revocable Living Trust Correctly," ESTATE PLANNING 67-68 (Mar./Apr. 1993).

6. Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 141 (1998).

7. Arlen, "Title Problems and Issues," ADMINISTRATION OF TRUSTS IN FLORIDA § 14.18 (3d ed. 2001).

8. American Land Title Association Owner's Policy (Form 5332) § 1(a).

9. *Id.* § 2.

10. *E.g.*, FLA. STAT. § 689.01 (how real estate is conveyed); N.H. REV. STAT. ANN. § 477.3 (execution of deeds); N.Y. REAL PROP. LAW § 243 (grant of freehold); ORE. REV. STAT. § 93.010 (2001) (how conveyances are made); TEX. PROP. CODE ANN. § 5.021 (instrument of conveyance).

11. *E.g.*, TEX. PROP. CODE. ANN. § 113.053 (purchase and sale of trust property by trustee). *See also* Wyo. Stat. §§ 34-2-122, 34-2-123. *E.g.*, *Estate of Lohrie*, 950 P. 2d 1030 (Wyo. 1997) (warranty deed

conveying property from Alexander and Marguerite Lohrie, husband and wife, to "the Alexander and Marguerite Lohrie Revocable Trust," as grantee, was effective notwithstanding that it failed to name the trust beneficiaries because the grantee was not a trustee or other individual agent).

12. 732 N.E. 2d 659 (Ill. App. 2000).

13. *Id.* at 661.

14. *Id.* at 662-65.

15. 575 F. Supp. 849 (S.D. Tex. 1983), *aff'd in part and vacated and remanded in part*, 771 F. 2d 874 (5th Cir. 1985), *cert. den.*, 475 U.S. 1085 (1986).

16. For a discussion of issues regarding the recording of deeds to a trustee, see Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 207 (2001); Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 142-45 (1998).

17. Issues pertaining to revealing the dispositive provisions of a trust to third parties are discussed in Part C of Chapter 3.

18. FLA. STAT. § 689.071.

19. Schmidt, "How to Fund a Revocable Living Trust Correctly," ESTATE PLANNING 68 (Mar./Apr. 1993).

20. *See* ANNOTATED MODEL RULES OF PROFESSIONAL CONDUCT 443-45 (3d ed.).

21. *E.g., Cleveland Bar Association v. Slavin*, 608 N.E. 2d 870 (1993) (nonattorney engaged in the unauthorized practice of law by the preparation of legal documents and the giving of legal advice and consultation on matters pertaining to the leasing of real property).

22. For example, if a nonresident of Florida dies owning real property in Florida, letters of administration are issued to the decedent's domiciliary personal representative, that is, personal representative from the decedent's state of domicile. To receive the ancillary letters of administration, the domiciliary representative must furnish authenticated copies of: (1) the will, the petition for probate, the order admitting the will to probate, and the letters of administration; or (2) the petition for letters and the letters. FLA. STAT. ANN. § 734.102(1), (2).

23. *See Casa Grande, Inc. v. Minnesota Mutual Life Insurance Co.*, 596 F. Supp. 1385 (S.D. Miss. 1984).

24. 12 U.S.C. § 1701j-3(a)(1).

25. *Id.* § 1701j-3(d).

26. *Id.* §1701j-3(d)(8).

27. *See Casa Grande, Inc. v. Minnesota Mutual Life Insurance Co.*, 596 F. Supp. 1385 (S.D. Miss. 1984).

28. 12 U.S.C. § 1701j-3(a)(2).

29. 221 B.R. 38 (S.D. Fla. 1998).

30. *Id.* at 39-40.

31. *Id.* at 40.

32. *Id.*

33. 12 U.S.C.A. § 84(b)(1).

34. I.R.C. § 7701(a)(1).

35. *E.g.*, MICH. COMP. LAWS § 600.6023(h); TEX. PROP. CODE ANN. § 41.001; N.H. REV. STAT. ANN. § 480.4.

36. 271 B.R. 403 (2001).

37. FLA. CONST. art. X, § 4(a).

38. N.H. REV. STAT. ANN. § 480:9.

39. The techniques for memorializing advice to clients regarding important trust funding issues is discussed in Part F of Chapter 4.

40. *E.g.*, FLA. CONST. art. X, § 4(c); MASS. GEN. LAWS chap. 188, § 4; N.H. REV. STAT. ANN. §§ 480:3-a, 480:6-a.

41. *See* Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 140 (1998).

42. Nash, "Funding," ADMINISTRATION OF TRUSTS IN FLORIDA, § 11.3 (3d ed. 2001).

43. The requirements for conveying real property by deed are discussed at Part A.1 of this chapter.

44. The requirements for conveying real property by deed are discussed in Part A.1 of this chapter. The issues to be considered when real property is located in a state other than the state in which the attorney is licensed to practice law are discussed in Part A.2 of this chapter. If an interest in a time-share is evidenced by a lease or a contract, rather than a deed, then the interest should be transferred in the same manner. *See* Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 212-13 (2001); Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 156-58 (1998).

45. The techniques for memorializing advice to clients regarding important trust funding issues is discussed in Part F of Chapter 4.

46. I.R.C. § 216(a).

47. *See* Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 154-56 (1998). The methods for transferring ownership of stock in a closely-held corporation are discussed in Part H.1.a of this chapter. The assignment of leasehold interests is discussed at in Part A.6 of this chapter.

48. *E.g., Crane v. Tambourine (In re Glenview Imports, Ltd.)*, 27 B. R. 496 (N.D. Ill. 1983) (automobiles not part of inter vivos trust because settlor did not transfer titles to the automobiles to the third party trustee).

49. *E.g.*, FLA. STAT. ANN. § 319.28(1)(b).

50. *E.g.*, FLA. STAT. ANN. § 735.201 (the value of the entire probate estate, less the value of exempt property, cannot exceed $25,000).

51. *See* Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 167 (2001); Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 211 (1998). According to regulations of the United States Department of Housing and Urban Development, manufactured homes are dwelling units of at least 320 square feet that are built on a permanent chassis that allows the structure to be transported in one or more sections. 24 C.F.R. § 3280.2. The estate planning attorney should investigate whether a homestead right may exist in a manufactured home, even if the client does not own the land on which the home is located. *See, e.g*, N.H. REV. STAT. ANN. § 480:1. Issues concerning the funding of homestead property are discussed in Part A.4.a of this chapter. If a manufactured home is financed and subject to a due-on-sale clause, the client should request written assurance that the lender will not enforce the clause; however, the Garn-St. Germain Depository Institutions Act of 1982, which preempts the lender from enforcing a due-on-sale clause on certain transfers of residential property, applies to manufactured housing. The issues raised by due-on-sale clauses are discussed in Part A.3.b of this chapter.

52. The transfer of real property to a trustee is discussed in Part A of this chapter.

53. FLA. STAT. ANN. § 319.22(1).

54. FLA. STAT. ANN. § 193.075(1). A mobile home is permanently affixed to land if it is tied down and connected to the normal and usual utilities. *Id.*

55. FLA. STAT. ANN. § 193.075(2).

56. *Texas Manufactured Housing Standards Act*, TEX. REV. CIV. STAT. ANN. art. 5221f.

57. The procedure for transferring title to a manufactured home is described on the Texas Department of Housing and Community Affairs website at www.tdhca.state.tx.us.

58. Any vessel of at least five net tons wholly owned by a U.S. citizen or citizens is eligible for federal documentation. 46 C.F.R. § 67.5. Vessels requiring documentation are described in 46 C.F.R. § 67.7, and vessels excluded from or exempt from registration are described in 46 C.F.R. § 67.9.

59. 46 C.F.R. § 67.5.

60. *Id.* § 67.36(a).

61. *See id.* §§ 67.59, 67.75, 67.141. The request to register the vessel should be sent to: United States Coast Guard, National Vessel Documentation Center, 792 T J Jackson Dr., Falling Waters, WV 25419. The required documents may be obtained by writing to the Documentation Center, by call-

ing 800-799-8362 or 304-271-2400, or by downloading from the Coast Guard website at www.uscg.mil.

62. The rules for the recording of aircraft titles are set forth in 14 C.F.R. Title 49, Aeronautics/Space," pt. 47. The forms for transfer of ownership of an airplane are obtained from: FAA Aircraft Registry, Department of Transportation, P. O. Box 25504, Oklahoma City, OK 73125 (405-954-3116). Additional helpful information is set forth in an FAA publication titled "Information to Aid in the Registration of U.S. Civil Aircraft" (AC Form 8050-94).

63. The FAA must be notified of any changes in the trusteeship of the trust. For example, if a co-trustee dies, a copy of the death certificate must be furnished to the FAA.

64. If the trust agreement is later amended, a certified copy of the amendment must be provided to the FAA. The FAA requires a single certified copy of the trust agreement to remain on file. If more than one aircraft is concurrently or subsequently transferred to the trust, additional certified copies are not required.

65. If the owner of property declares himself or herself trustee of tangible personal property for the benefit of another, a court may conclude that the property is subject to the trust notwithstanding the absence of a formal transfer. *E.g.*, *Taliaferro v. Taliaferro*, 921 P. 2d 803 (Kan. 1996) (where a settlor declared himself trustee for the benefit of himself for life with the remainder at his death to named beneficiaries, a valid trust was created with respect to assets listed on a property schedule, including all his tangible personal property, even though none of the assets was retitled in the name of the settlor as trustee); *Wilkerson v. McClary*, 647 S.W. 2d 79 (Tex. App. 1983) (where a settlor declared herself trustee of certain assets, including household furnishings, a valid trust was created even though the property was not retitled in the trustee's name). *See also Flagship National Bank v. Kelley*, 516 So. 2d 1067 (Fla. App. 1987) (certain personal property passed under decedent's will rather than pursuant to the terms of a living trust established by decedent's lifetime).

66. Schmidt, "How to Fund a Revocable Living Trust Correctly," ESTATE PLANNING 67, 71 (Mar./Apr. 1993).

67. Esperti, Petersen, & Cahoone, THE LIVING TRUST WORKBOOK 163-64 (2001).

68. *See Estate of Harvey v. Luther College*, 802 S.W. 2d 585, 588 (Mo. App. 1991) (where an individual created a revocable trust for the benefit of a college and named himself and the college as co-trustees, a nonnegotiable certificate of deposit was not property of the trust because, although the certificate was in the possession of the college, the certificate was not retitled in the names of the co-trustees).

69. *See* Turner, REVOCABLE TRUSTS § 33.13 (2002).

70. *See* Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 198-99 (1998); Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 145-46 (2001).

71. In some states, it may be possible to enable a nontrustee third party to sign on checking and savings accounts by including a provision in the trust agreement that nominates a specified individual as signatory on bank accounts as an accommodation or convenience to the settlor. *See* Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 15-16, 192-93 (1998).

72. 12 C.F.R. § 330.6(a). Additional information concerning the insurance limitations and requirements for accounts owned by living trusts can be found in the FDIC pamphlet titled "Your Insured Deposit" (FDIC P-1400-003-99), which can be viewed on the FDIC website at www.fdic.gov.

73. "New Rules for Revocable Living Trust Accounts," at www.fdic.gov. Before April 1, 2004, more restrictive rules applied in the trust account context. Under the prior rules, per beneficiary coverage was not available if the trust agreement contained a defeating contingency relating to qualifying beneficiary's interest. 12 C.F.R. § 330.10(f). A defeating contingency is a condition that would prevent a beneficiary from acquiring a vested and noncontingent interest in the funds upon the settlor's death. *Id.*

74. "New Rules for Revocable Living Trust Accounts," at www.fdic.gov.

75. *Id.*

76. *Id.* § 745.3(a). Additional information concerning the insurance limitations and requirements for share accounts owned by living trusts can be found in the NCUA publication titled "Your Insured Funds" (NCUA 8046), which can be viewed on the NCUA website at www.ncua.gov.

77. 12 C.F.R. § 745.3(a)(1).

78. *Id.* § 745.4(e).

79. *Id.* § 745.4(b).

80. *Id.* § 745.4(e).

81. The transfer of U.S. savings bonds to a revocable living trust generally will not cause taxation of the accumulated deferred interest because the settlor is treated as the owner of the trust under the grantor trust rules. Rev. Rul. 58-2, 1958-1 C.B. 236 (transfer of Series E bonds to trust). *Accord* PLR 7826024.

82. Form PD F 1851 can be requested or downloaded from the Department of the Treasury Bureau of Public Debt's website at www.publicdebt.treas.gov.

83. The reproduction of U.S. government securities is prohibited. 18 U.S.C. § 504(2). Thus the schedule of savings bonds to be reissued cannot be completed by photocopying the bonds and attaching the copies to the form. Because the original bonds must be submitted with the request for reissue, it is essential that the bonds be described accurately on Form PD F 1851.

84. Form PD F 3500 can be requested or downloaded from the Department of the Treasury Bureau of Public Debt's website at www.publicdebt.treas.gov.

85. The availability of a trust registration for Series I bonds in a TreasuryDirect account may be a future enhancement to the electronic system. To find out the current status of trust registration for such accounts, contact the Bureau of Public Debt at 304-480-6112.

86. Form PD F 5178 can be requested or downloaded from the Department of the Treasury Bureau of Public Debt's website at www.publicdebt.treas.gov. The form must be submitted as a single-page document. If the form is downloaded from the Internet, the user is instructed to photocopy the second page onto the back of the first page so that the document can be submitted on a single page.

87. Normally the social security number of a revocable living trust is the same as the account owner. If the social security number of the first listed owner of the TreasuryDirect account is different from the social security number used for the revocable trust, a new account is established for the trust using Form PD F 5182 E, titled "New Account Request," and the existing account is transferred to the new trust account using Form PD F 5179, titled "Security Transfer Request."

88. Requests for copies of the trust agreement are discussed in Part C of Chapter 3.

89. *E.g.*, *Ballard v. McCoy*, 443 S.E. 2d 146 (Va. 1994) (where settlor signed a trust agreement naming his niece and her husband as trustees, the trust failed because the stocks, bonds, and other intangible assets intended as the trust property were not transferred to the trustees). If the owner of property declares himself or herself trustee of stock for the benefit of another, a court may conclude that the property is subject to the trust notwithstanding the absence of a formal transfer. *E.g.*, *Taliaferro v. Taliaferro*, 921 P. 2d 803 (Kan. 1996) (where a settlor declared himself trustee for the benefit of himself for life with the remainder at his death to named beneficiaries, a valid trust was created with respect to assets listed on a property schedule, including stock in a named corporation, even though none of the assets were retitled in the name of the settlor as trustee); *Wilkerson v. McClary*, 647 S.W. 2d 79 (Tex. App. 1983) (where a settlor declared herself trustee of certain assets, including stocks, a valid trust was created even though the stocks were not retitled in the trustee's name); *Bourgeois v. Hurley*, 392 N.E. 2d 1061, 1065–66 (Mass. App. 1979) (where a husband signed a trust agreement and named himself and his wife as co-trustees, certain securities listed on a property schedule attached to the trust agreement were held to constitute trust property, notwithstanding that the securities were not retitled in the names of the co-trustees or otherwise formally transferred to the trust). The transfer of stock in closely held corporations is discussed in Part H of this chapter.

90. Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 151 (2001); Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 164 (1998).

91. *See* Part J.4 of this chapter for a discussion of the leasing of a safe-deposit box by the trustee.

92. If the promissory note is secured by a mortgage on real property, the mortgage and note are typically assigned together, as discussed in Part G.2 of this chapter. For assignment of a security interest in personal property, see Part G.3 of this chapter. In *Aiello v. Clark*, 680 P. 2d 1162 (Ala. 1984), a mother and daughter held undivided one half interests in a promissory note. The mother created a trust to hold the note and other property, naming herself and the daughter as co-trustees. A few years after creating the trust, the mother, acting individually and as attorney in fact for the daughter, attempted to assign the note to her son and daughter-in-law. The daughter brought suit seeking to have the assignment of her mother's partial interest in the note to the son and daughter-in-law set aside on the ground that it violated the trust. Although the promissory note in question was listed as trust property on a schedule attached to the trust agreement, the note was never formally assigned to the co-trustees. According to the Alaska Supreme Court, no formal transfer of the mother's interest in the note was required because a "note may be assigned merely by execution of the trust document." *Id.* at 1167. Notwithstanding that the mother and daughter were co-trustees of the trust, the court apparently treated the trust as a declaration of trust upon which an assignment or transfer of possession was not required. *Id.* As the mother had not revoked the trust or otherwise withdrawn the note from the trust, the subsequent assignment of the mother's interest in the note to the son and daughter-in-law was invalid because it violated the trust. *Id.* at 1167–68.

93. *See* Part A.2 of this chapter for a discussion of related issues pertaining to property located in a state other than the client's state of domicile.

94. For a discussion of the importance of coordinating the trust agreement with the assets to be funded into a trust, see Part D.1 of Chapter 1.

95. I.R.C. § 1361(a)(2). Special funding considerations respecting S corporations are discussed at Part H.2 of this chapter.

96. When issuing a new stock certificate in the name of the trust, the attorney may discover that the corporate book is not up to date. For example, stock certificates may never have been issued to the initial shareholders, or minutes of the annual shareholders' and directors' meetings may be missing or nonexistent. The attorney should recommend that the corporate book be updated to reflect the requirements of state law and, if applicable, offer to perform the service as separate matter from the trust funding.

97. I.R.C. § 1244(a).

98. *Id.* § 1244(c)(1)(A), (B), (3)(A).

99. *Id.* § 1244(c)(1)(C).

100. *Id.* § 1244(d)(4).

101. The transfer of ownership of C corporation stock and restrictions on the transfer of the stock are discussed at Parts H.1.a and H.1.b, respectively, of this chapter.

102. I.R.C. § 1361(a)(1).

103. *Id.* § 1361(b)(1)(A), (C), (D). Corporations that are ineligible for S corporation status are described in I.R.C. § 1361(b)(2).

104. I.R.C. § 1361(b)(1)(B).

105. *Id.* §§ 1363(a), 1366(a).

106. *Id.* §1361(b)(1)(B). *E.g.*, Rev. Rul. 89-45, 1989-1 C.B. 267 (corporation did not qualify as an S corporation for any year in which an unauthorized trust was a shareholder).

107. I.R.C. § 1361(b)(1)(B), (c)(2), (d)(1). *See* Treas. Reg. § 1.1361-1(h)(1). A foreign trust cannot own stock in an S corporation. § 1361(c)(2)(A) (flush sentence).

108. *E.g.*, PLR 9352004 (grantor retained annuity trust was an eligible S corporation shareholder because the grantor will be treated as the owner of the trust under the grantor trust rules).

109. I.R.C. § 1361(d)(1), (3). *See* Treas. Reg. § 1.1361-1(j).

110. *See* Rev. Rul. 89-45, 1989-1 C.B. 27 (trust for a grandchild did not qualify as a QSST because the trust mandated additional trusts to be created from the trust principal if additional grandchildren were born).

111. I.R.C. § 1361(e)(1)(A). *See* Treas. Reg. § 1.1361-1(m).

112. I.R.C. § 1361(e)(2).

113. Treas. Reg. § 1.1361-1(h)(3)(ii)(A).

114. C corporations and S corporations are discussed in Parts H.1 and H.2, respectively, of this chapter.

115. *See also* ARIZ. REV. STAT. §§ 10-2220, 10-2222 (stock in a professional corporation may be issued or transferred to a trust established for the benefit of a licensed individual or members of the licensed individual's immediate family in which the licensed individual has the right to vote the shares and the trust and the members of the licensed individual's immediate family do not have such right); IND. CODE §§23-1.5-3-1(a)(4), 23-1.5-3-12, 23-1.5-3-13 (shares in a professional corporation may be issued or transferred to the trustee of a qualified trust, including a trust of which the entire beneficial interest is owned by a licensed professional and of which the trustee is a licensed professional and certain charitable remainder trusts); N.Y. BUS. CORP. LAW § 1511 (stock in a professional service corporation can be transferred to another individual who is authorized to have shares issued to him or her or in trust to another individual who would be eligible to receive shares if he or she were employed by the corporation).

116. NEV. REV. STAT. § 89.070.

117. MICH. COMP. LAWS § 450.230.

118. N.H. REV. STAT. ANN § 294-A:8(I), (III). *See also* Del. Code Ann. tit. 8 § 612; D.C. CODE ANN. § 29-412; KY. REV. STAT. ANN. § 274.017(1).

119. KY. REV. STAT. ANN. § 274.017(2); N.H. REV. STAT. ANN § 294-A:8(III).

120. *See McCormick v. Brevig*, 980 P. 2d 603 (Mont. 1999) (where settlor executed an irrevocable trust designed to hold certain partnership interests and named his daughter as trustee, the trust failed because the partnership interests were not assigned to the trust). If the owner of property declares himself or herself trustee of a partnership interest for the benefit of another, a court may conclude that the interest is subject to the trust notwithstanding the absence of a formal transfer. *E.g.*, *Medical Center Bank v. Keller (In re Keller)*, 62 Bankr. 108 (S.D. Tex. 1986) (where a settlor declared herself trustee of interests in limited partnerships and joint ventures for the benefit of her children, a valid trust was created even though the interests were not retitled in the trustee's name). *DuPont v. Southern Natn'l Bank*, 575 F. Supp. 849 (S.D. Tex. 1983), *aff'd in part and vacated and remanded in part*, 771 F. 2d 874 (5th Cir. 1985), *cert. den.*, 475 U.S. 1085 (1986), involved an attempt by a settlor to avoid all or part of an irrevocable trust that he created in 1972 and initially funded with corporate securities. The trustees of the trust were the settlor's attorney and a corporate fiduciary. One of the funding issues concerned an apartment building that at one time had been owned by a corporation. Prior to the creation of the trust, the corporation was dissolved and the building was transferred to a limited partnership in which the settlor owned a limited partnership interest. In 1973 the settlor executed an assignment that conveyed stock in the corporation to the trustees. The settlor did not attempt to assign his interest in the limited partnership that owned the building; in any event, the partnership agreement required the consent of all partners to any assignment of interest and the consent was not obtained. After the settlor and his wife divorced in 1978, the settlor sought to avoid the trust. A federal district court determined that the trustees did not hold legal title to the partnership interest. The Court of Appeals for the Fifth Circuit vacated and remanded the trial court's decision on this issue on the ground that the trial court improperly denied the trustees an opportunity to present evidence on the validity of the transfer. Some state statutes expressly authorize a trustee to acquire an interest in a general or limited partnership. *E.g.*, ALA. CODE § 19-3-151.

121. *E.g.*, FLA. STAT. §§ 620.152(1)(b) (limited partnership), 620.8503 (general partnership).

122. *E.g.*, *id.* § 620.108(1).

123. *E.g.*, *id.* § 620.109(2)(a).

124. State partnership law generally permits assignment of partnership interests unless the partnership agreement provides otherwise. *E.g.*, *id.* §§ 620.152(1)(a) (limited partnership interests), 620.8503(1)(a) (general partnership interests).

125. *E.g.*, ALA. CODE § 10-12-32(a)(1); CONN. GEN. STAT. § 34-170(a)(1); FLA. STAT. ANN. § 608.432(1).

126. Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 189–90, 297 (2001).

127. Nash, "Funding," ADMINISTRATION OF TRUSTS IN FLORIDA § 11.32 (3d ed. 2001).

128. Some attorneys use a blanket "Assignment of Sole Proprietorship" or a broad assignment that purports to transfer all of the property used in a sole proprietorship, including real and personal property tangible and intangible property wherever located. While such assignments may indicate the settlor's intent to transfer all assets used in the sole proprietorship to the trust, they will not effect an actual transfer of many of the assets, such as real property, bank accounts, leases, and insurance policies, because the assignments do not satisfy the state or institutional requirements for a valid transfer.

129. *See Papale-Keefe v. Altomare*, 647 N.E. 2d 722 (Mass. App. 1995) (where settlor signed an endorsement to his share certificate in a business trust to transfer the beneficial interest to another trust, and the certificate was found after the settlor's death in the records of his accountant with no explanation of its presence there, the purported transfer to the trust was ineffective because of the lack of delivery to the trustee).

130. Links to the websites for many state college tuition or savings programs are at www.mapping-your-future.org/features/savingsprograms.htm.

131. If an individual already has a revocable living trust and wishes to participate in the Prepaid College Plan, the trust can apply as the initial purchaser.

132. Another approach may be to assign the membership to the trustee of a revocable trust, subject to approval by the club's governing body. *See* Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 226, 317 (2001).

133. Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 225–26 (2001); Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 215 (1998).

134. For a discussion of the funding issues with regard to registered horses, see Turner, REVOCABLE TRUSTS § 33.12 (4th ed. 2002).

135. The discussion in the text focuses on the treatment of an insurance policy owned by the settlor of a trust who is also the insured under the policy. Careful evaluation should be made in other contexts before funding insurance policies into trusts. For example, a husband may own a life insurance policy on the life of his wife. Assuming that the wife has no incidents of ownership in the policy, upon her death the proceeds will not be included in her gross estate for estate tax purposes. I.R.C. § 2042. If the policy is transferred to the husband's revocable trust and the wife is a present or future trustee of the trust, depending on the terms of the trust, she may be found to have incidents of ownership in the policy due to her powers as trustee, resulting in the inclusion of the proceeds in her gross estate. *See* Treas. Reg. § 20.2042-1(c)(4). *Compare Rose v. United States*, 511 F. 2d 259 (5th Cir. 1975) (incidents of ownership in life insurance policies held by a decedent as trustee of trusts for the benefit of his children resulted in inclusion of the proceeds in the value of his estate), *with Estate of Skifter v. Commissioner*, 468 F. 2d 699 (2d Cir. 1972) (where decedent's wife owned life insurance policies on his life and, under the terms of her will, the policies went into a trust of which the decedent was trustee for the benefit of their daughter, control over the policies possessed by the decedent as trustee did not require inclusion of the proceeds in his gross estate because the power as trustee was conveyed to the decedent long after he divested himself of all interest in the policies and he could not exercise the power for his own benefit). The Internal Revenue Service agreed with the rationale of *Skifter* in Rev. Rul. 84-179, 1984-2 C.B. 195. If a spouse or other third party owns a life insurance pol-

icy on the life of a settlor of a revocable living trust and the trust is named as the beneficiary, the settlor's right to revoke the trust may be considered a general power of appointment that would require inclusion of the proceeds in the settlor's gross estate under Section 2041. *See Estate of Margrave v. Commissioner*, 71 T.C. 13 (1978), *aff'd* 618 F. 2d 34 (8th Cir. 1980) (Chabot, J., dissenting opinion).

136. Term policies provide coverage for a specified period of time and the proceeds are payable only if the insured dies during the term.

137. Permanent policies include whole life, ordinary life, universal life, adjustable life, and variable life policies. These policies generally have a cash value for which the policy can be surrendered.

138. I.R.C. § 2042. *See* Treas. Reg. § 1.2042-1.

139. If the owner of a life insurance policy declares himself or herself trustee of the policy for the benefit of another, a court may conclude that the policy is subject to the trust notwithstanding the absence of a formal transfer. *E.g.*, *Taliaferro v. Taliaferro*, 921 P. 2d 803 (Kan. 1996) (where a settlor declared himself trustee for the benefit of himself for life with the remainder at his death to named beneficiaries, a valid trust was created with respect to assets listed on a property schedule, including stock in a named corporation, a specific life insurance policy, and all his tangible personal property, even though none of the assets were retitled in the name of the settlor as trustee). *See also In re Snider Brothers, Inc.*, 12 Bankr. 87 (D. Mass. 1981) (where an employer agreed to transfer insurance policies to a third party trustee for the benefit of a valued employee in consideration for the employee's covenant not to compete and agreement to accept a lower current pay rate, but the employer failed to transfer the policies to the trustee, the express trust failed because legal title to the property was not transferred to the trustee but a resulting trust was imposed in favor of the employee).

140. Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 171 (2001).

141. Requests for copies of the trust agreement are discussed at Part C of Chapter 3.

142. For a discussion of naming a trust as beneficiary, see Part A.2 of Chapter 3.

143. *E.g.*, FLA. STAT. ANN. § 222.14; N.Y. CONSOL. LAWS, chap. 28, § 3212(b), (f).

144. *E.g.*, FLA. STAT. ANN. § 222.13; N.Y. CONSOL. LAWS, chap. 28, § 3212(b), (f).

145. A private annuity is a similar contract between an individual and a private person or entity (not an insurance company), such as a family member or charitable organization. Ownership of a private annuity can be transferred to a revocable living trust by means of assignment. For a discussion of the designation of a revocable living trust as the recipient of a settlor's lottery annuity payments, see Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 239–44 (1998).

146. I.R.C. § 72(a), (b)(1).

147. Section 72(u)(1) of the Internal Revenue Code provides that, if an annuity contract is held by a person who is not a natural person, the contract is not eligible for the special income tax treatment under Section 72 and the income on the contract for any taxable year is treated as income received or accrued by the contract owner. For purposes of the nonnatural owner rule, holding of a contract by a trust or other entity as agent for a natural person is not taken into account. I.R.C. § 72(u)(1) (flush sentence). *Compare* Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 237 (1998) (revocable trust should be the owner of an annuity unless the contract or plan prohibits the transfer), *with* Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 173 (2001) (it is not advisable or necessary to transfer ownership of an annuity to a revocable living trust).

148. *See* I.R.C. § 72(s).

149. For a discussion of naming a trust as beneficiary, see Part A.1 of Chapter 3.

150. *E.g*, FLA. STAT. Ann. § 222.14; N.Y. CONSOL. LAWS, chap. 28, §3212(d), (f).

151. The rules pertaining to distributions from qualified retirement plans, which are detailed and complex, are summarized in this section for the purpose of alerting the reader to the special considerations applicable when a trust is named as beneficiary under a plan. For a detailed examination of qualified retirement plan benefits, see Louis A. Mezzullo, ESTATE PLANNER'S GUIDE TO QUALIFIED RETIREMENT PLAN BENEFITS (3d ed. 2002).

152. I.R.C. § 401(a)(13). *See* Treas. Reg. § 1.402(b)-1(d)(2)(i). If the owner of a Roth IRA trans-

fers his or her rights under the Roth IRA to another individual by gift, the transaction is treated as an assignment of the owner's rights under the Roth IRA. Treas. Reg. § 1.408A-6, A-19. At the time of the gift, the assets of the Roth IRA are deemed to be distributed to the owner and therefore are treated as no longer held in a Roth IRA. *Id.*

153. *See Fielding v. BT Alex Brown*, 116 F. Supp. 2d 59 (D. D.C. 2000) (attempted trust of an IRA account failed because the trustee did not have title to or authority over the account and apparently no beneficiary was designated). The inability to transfer ownership of a qualified retirement plan creates a potential problem if the plan participant is receiving distributions from the plan and becomes incapacitated. Practical solutions suggested by commentators to address this issue include naming the trustee of a revocable living trust as intermediary payee of the benefits, requesting the plan administrator to pay distributions directly into an account in the name of a trust, and using a special durable power of attorney for funding distributions as received. Esperti, Peterson, & Cahoone, THE LIVING TRUST WORKBOOK 175 (2001); Moy, LIVING TRUSTS AFTER THE 1997 TAXPAYER RELIEF ACT 222-223 (1998).

154. I.R.C. § 401(a)(9); Treas. Reg. § 1.401(a)(9)-0 through-9. The Treasury Regulations applying the required minimum distribution rules of I.R.C. § 401(a)(9) apply to qualified stock bonus, pension, and profit-sharing plans described in I.R.C. § 401(a). Similar required minimum distribution rules apply to annuity contracts, custodial accounts, or retirement income accounts purchased or established by a charitable organization or public school under I.R.C. § 403(b). I.R.C. § 403(b)(10). *See* Treas. Reg. § 1.403(b)-3. Similar required minimum distribution rules apply to individual retirement accounts described in I.R.C. § 408. I.R.C. §408(a)(6), (b)(3). *See* Treas. Reg. § 1.408-8, A-1. The required minimum distribution rules of I.R.C. § 401(a)(9)(B) apply after the death of the owner of a Roth IRA. I.R.C. § 408A(c)(5); Treas. Reg. § 1.408A-6, A-14, A-15. The Treasury Regulations cited in this section apply for purposes of determining required minimum distributions for calendar years beginning on or after January 1, 2003. Treas. Reg. § 1.401(a)(9)-1, A-1(a). *See* Holt, "Set in Stone: The Much Awaited 'Final Regulations for Distributions from Qualified Plans and IRAs' Are Memorialized," 141 TRUSTS & ESTATES 8 (June 2002).

155. I.R.C. § 401(a)(9)(A); Treas. Reg. § 1.401(a)(9)-2, A-1(a).

156. I.R.C. § 401(a)(9)(C); Treas. Reg. § 1.401(a)(9)-2, A-2.

157. Treas. Reg. § 1.408-8, A-3.

158. I.R.C. § 401(a)(9)(A)(ii); Treas. Reg. § 1.401(a)(9)-2, A-1(a). For purposes of the minimum distribution rules, life expectancies are determined under tables set forth in Treas. Reg. § 1.401(a)(9)-9. Treas. Reg. § 1.401(a)(9)-5, A-6.

159. Treas. Reg. § 1.401(a)(9)-5, A-5(a). The Internal Revenue Code provides that the remainder must be distributed to the designated beneficiary at least as rapidly as under the distribution method being used by the participant as of the date of death. I.R.C. § 401(a)(9)(B)(i); Treas. Reg. § 1.401(a)(9)-2, A-5. A designated beneficiary may be designated under the terms of the plan or by the election of the plan participant. Treas. Reg. § 1.401(a)(9)-4, A-1.

160. Treas. Reg. § 1.401(a)(9)-5, A-5(a)(1). The applicable distribution period over the remaining life expectancy of the designated beneficiary is determined as provided in Treas. Reg. § 1.401(a)(9)-5, A-5(c)(1) (nonspouse beneficiary) and Treas. Reg. § 1.401(a)(9)-5, A-5(c)(2) (spouse as beneficiary). The applicable distribution period over the remaining life expectancy of the participant is determined pursuant to Treas. Reg. § 1.401(a)(9)-5, A-5(c)(3).

161. Treas. Reg. § 1.401(a)(9)-5, A-5(a)(2). The remaining life expectancy of the participant is determined as provided in Treas. Reg. § 1.401(a)(9)-5, A-5(c)(3).

162. I.R.C. § 401(a)(9)(B)(ii); Treas. Reg. § 1.401(a)(9)-5, A-1(a). The participant's interest must be distributed by the end of the calendar year which contains the fifth anniversary of the date of death. Treas. Reg. § 1.401(a)(9)-5, A-2.

163. Treas. Reg. § 1.401(a)(9)-(3), A-4(a)(2).

164. I.R.C. § 401(a)(9)(B)(iii); Treas. Reg. § 1.401(a)(9)-3, A-1(a).

165. I.R.C. § 401(a)(9)(B)(iii)(III); Treas. Reg. § 1.401(a)(9)-3, A-3(a).

166. I.R.C. § 401(a)(9)(B)(iv); Treas. Reg. § 1.401(a)(9)-3, A-3(b).

167. I.R.C. §§ 402(c)(9), 408(d)(3)(C)(ii); Treas. Reg. § 1.408-8, A-5, A-7. To make a rollover election, the surviving spouse must be the sole beneficiary of the plan or account and have an unlimited right to withdraw amounts. Treas. Reg. § 1.408-8, A-5(a). Rollover is not permissible if a trust is named as the beneficiary, even if the surviving spouse is the sole beneficiary of the trust.

168. If an individual makes a qualified disclaimer under I.R.C. § 2518, the estate and gift tax laws apply as if the interest disclaimed had never been transferred to the individual. I.R.C. § 2518(a).

169. I.R.C. §§ 401(a)(11), 417(a)(2).

170. *See generally* Houghton & Wallace, "Using Trusts Effectively in Retirement Planning, Part II: Planning and Drafting Suggestions," PROBATE & PROPERTY (Nov./Dec. 2002).

171. I.R.C. § 401(a)(9)(E); Treas. Reg. § 1.401(a)(9)-4, A-1.

172. Treas. Reg. § 1.401(a)(9)-4, A-5(a). The terminology in this area is confusing because the word "beneficiary" is used in two contexts: first as referring to the beneficiary of a trust and second as referring to the beneficiary of a qualified retirement plan. For clarity, this section uses the term "trust beneficiary" to refer to the beneficiary under a private express trust and the term "designated beneficiary" to refer to a beneficiary designated by a plan participant to receive plan benefits within the meaning of I.R.C. § 401(a)(9)(E).

173. Treas. Reg. § 1.401(a)(9)-4, A-5(b). The requirements must be satisfied during any period during which required minimum distributions are being determined.

174. The members of a class capable of expansion or contraction are treated as being identifiable so long as it is possible to identify the class member with the shortest life expectancy. Treas. Reg. § 1.401(a)(9)-4, A-1.

175. The documentation requirements are set forth in Treas. Reg. § 1.401(a)(9)-4, A-6.

176. Treas. Reg. §§ 1.401(a)(9)-4, A-3, A-5(c). The separate account rules under A-2 of Treas. Reg. § 1.401(a)(9)-8 are not available to trust beneficiaries with respect to the trust's interest in the plan benefit. Treas. Reg. § 1.401(a)(9)-4, A-5(c).

177. Treas. Reg. § 1.401(a)(9)-4, A-5(d).

178. *Id.* § 1.401(a)(9)-4, A-3.

179. *Id.* § 1.401(a)(9)-5, A-7(a)(1). The rules for determining the beneficiary whose life expectancy will be used to determine the distribution period are set forth in *id.* § 1.401(a)(9)-5.

180. Treas. Reg. § 1.401(a)(9)-5, A-7(c)(1).

181. *Id.* § 1.401(a)(9)-5, A-7(a)(1).

182. I.R.C. § 401(a)(9)(B)(iii)(III); Treas. Reg. § 1.401(a)(9)-3, A-3(a). The example appears in Treas. Reg. § 1.401(a)(9)-5, A-7(c)(3), ex. 1.

183. Treas. Reg. § 1.401(a)(9)-3, A-3(b). The example appears in Treas. Reg. § 1.401(a)(9)-5, A-7(c)(3), ex. 2.

184. For a discussion of naming a trust as beneficiary, see Part A.1 of Chapter 3.

185. *Id.*

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